Supreme Court, U. S.
FILED
JUN 30 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

No. 79-2055

(U.S.C.O.A., 3rd Ct. Civil Case No. 80-1474)

NICHOLAS MAZUR, Petitioner and Appellant,

vs.

Commonwealth of Pennsylvania, Department of Transportation, Civil Service Commission, Governor's Office of Administration, and American Federation of State, County, & Municipal Employees Union(AFSCME).;

Respondent(s) and Defendant(s);

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, BEFORE JUDGMENT.

Nicholas Mazur, Pro se

Counsel for the Petitioner
819 N. 21st Street,
Allentown, Pa. 18104
215-433-1587

IN THE SUPREME COURT OF THE UNITED STATES

June 26,1980
819 N. 21st Street,
Allentown,Pa. 18104
215-433-1587.

Michael Rodak, Clerk of Court
Office of the Clerk,
United States Supreme Court
1 First Street, N.E.,
Washington, D.C. 20545.

Re: NICHOLAS MAZUR, APPELLANT,, vs. COMMONWEALTH OF PENNSYLVANIA, ET AL; and, AMERICAN FEDERATION OF STATE,COUNTY & MUNICIPAL EMPLOYEES UNION(AFSCME). APPELLEES.
October Term_____. Case No_____
(U.S.C.O.A. (3rd. ckt.) Civil case No. 80-1474.)

Dear Mr Rodak:

Attached, you will find an original and forty(40) copies of briefs for "PETITION FOR WRIT OF CERTIORARI, BEFORE JUDGMENT" in the United States Court of Appeals, for the Third Circuit, in accordance to Rules 12 and 30 of the Supreme Court Rules.

By copy of this letter, I am serving my petition, to the Appellees legal advisors and representatives(three copies each)., concerned with captioned matter.

I am enclosing my personal check for One hundred dollars, to cover cost of filing fee.

Under Supreme Court rule 47 and 28 U.S.C. §1916 ,§1925, a Veteran suing to establish reemployment rights under 38 U.S.C. §2022, or under similar provisions of law exempting veterans from payment of fees or court costs. Your cooperation on said matter would be appreciated.

Yours very truly,

Nicholas Mazur

Nicholas Mazur, Appellant, Pro se

IN ANY COURT OF THE UNITED STATES
Veteran's and Seaman's Cases

Complaint for relief of Payment of Court Fees, or Court costs, Typing, duplicating and/or zerox copy services.

Jurisdiction

Jurisdiction of the court is invoked under Title 28 U.S.C. § 1915 & § 1916, and Supreme Court Rule 46 and 47, providing for relief of court costs to a Veteran seeking or suing for reemployment, which in this case, is the Commonwealth of Pennsylvania.

Case In Question

NICHOLAS MAZUR, PETITIONER AND APPELLANT, vs. Commonwealth of Pennsylvania, Department of Transportation, Civil Service Commission, Governor's Office of Administration, and, American Federation of State, County, and Municipal Employees(AFSCME). Appellees and Defendants : U.S. Supreme Court October Term,1980 : Case No._____ (U.S.C.O.A.(3rd ckt.) Civil ase 80-1474.)

I Nicholas Mazur, Petitioner, Pro se, am filing A"PETITION OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS for the Third Circuit before Judgment.

CERTIFICATION OF SERVICE

Petitioner, NICHOLAS MAZUR, Military Service No. 885660, served with the United States Marine Corps during the following periods 8-5-43 to 6-28-46 and 2-1-48 to 3-22-51. The foregoing is true, and correct, to which I certify, and attach my Honorable Discharge records, hereto.

Signed By:

Nicholas Mazur

Nicholas Mazur, Petitioner
819 N. 21st Street,
Allentown, Pa. 18104
215-433-1587

Date: June 25, 1980

BRUCE [illegible], NOTARY PUBLIC
ALLENTOWN, LEHIGH COUNTY
MY COMMISSION EXPIRES NOV. 15, 1982
Member, Pennsylvania Association of Notaries

IN THE SUPREME COURT OF THE UNITED STATES
October Term, _____
Case No._____
(U.S.C.o,A. (3rd Ct) Civil Case No. 80-1474)

NICHOLAS MAZUR,
PETITIONER AND APPELLANT,

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, CIVIL DERVICE COMMISSION, GOVERNOR'S OFFICE OF ADMINISTRATION, and, AMERICAN FEDERATION OF STATE, COUNTY, & MUNICIPAL EMPLOYEES UNION (AFSCME).
RESPONDENTS AND DEFENDANTS.

BRIEF FOR THE PETITIONER FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS for the THIRD CIRCUIT BEFORE JUDGMENT.

AND NOW, I, NICHOLAS MAZUR , Petitioner and Appellant, Pro se, prays that a writ of certirorari issue to review that order of the United States Court of Appeals, for the Third Circuit, made and entered in the above entitled cause , on June 10,1980.

Richard Thornburgh, Governor
Frank A. Fisher, Asst. Atty. General
Barbara G. Raup, " " "
Edward G. Biester, Attorney General
Ward T. Williams, Chief Counsel
Attorneys/Reperesentatives
for the Respondents;Commonwealth of Pennsylvania,Department of Transportation, Civil Service Commission, and Governor's Office of Administration.
Office of Chief Counsel, T&S Bldg., Harrisburg, Pa. 17120

(and) Richard Kirschner,Esq.
Jonathan K. Walters, Esq.
Attorneys for Respondents, American Federation,State, County, & Municipal Employees Union(AFSCME).
1500 Walnut Street, Philadelphia, Pa. 19102

(and)

T.F. Quinn, Clerk
United States Court of Appeals, for the Third circuit, 214000 U.S. Courthouse, 601 Market St;,Phila.,Pa.19106

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case no._____
(U.S.C.O.A. (3rd ckt.) Civil case no. 80-1474.)

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980.

U.S.C.O.A.(3rd. Ct.) Civil Case No. 80-1474

STATEMENT OF THE CASE - Facts

Appellant, Nicholas Mazur, sets forth the salient facts of this case because of the Judicial discretion has so far departed from the accepted and usual course of Judicial proceddings, as to call for an exercise of this Court's(Supreme) power of supervision and decided a Federal question, in a way, in conflict with the applicable decisions of the Court.

The case is of such imperative Public importance, as to justify the deviation from normal Appellate processes and to require immediate settlement in the Supreme Court of United States.

1.(Carter vs. Carter Coal Co. , 298 U.S. 238(1936), Brown vs.Board of Education and Bolling vs. Sharpe.).

2.U.S. Constitutional Amendment V, Pl163).

3. U.S. Constitutional Amendment I

4. U.S. Constitutional Article III

5. 28 U.S.C. § 1343; 28 U.S. C. § 1653; 28 U.S.C. § 2101 (e).

6. Mayo vs. Lakeland Canning Co, 309 U.S. 310 (1936).

7.Ex Parte- Quinn , 317 U.S. 1 (1942).

8.Railroad Retirement Board vs. Alton R. Co.295 U.S. 330 (1935).

9.Rieckert Rose Mills vs. Fontenot , 297 U.S. 110 (1936).

10. U.S. vs. Mine Workers 330 U.S. 258 (1947).

Vachon vs. New Hampshire (1974), 414 U.S. 478.

IN THE UNITED STATES SUPREME COURT
OCTOBER Term, L980
Case no._____
(U.S. C.O. A. Third Circuit Civil case No.80-1474)

STATEMENT OF SUBJECT MATTER JURISDICTION

This a petition for a writ of certiorari to the United States Court of Appeals, Third Circuit, from the order dated June 10,1980, overruling a motion for default and relief.

Jurisdiction of the Court is invoked under Title 28,U.S.C. § 1254(1), providing for a writ of certiorari upon the petition of any party before rendition of judgment, by the United States Court of Appeals, for the Third Circuit.

Also applicable : 28 U.S.C. § 2101(d).; Mayo v. Lakelands Canning Co., 309 U.S. 310(1940); U.S. vs. Corrick, 298U.S. 435(1935); Vachon Vs. New Hampshire(1947) 414, U.S. 478,38 L.Ed..2d 666,94S. Co. 644.

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No._____
(U.S.C.O.A. (3rd Ckt. Civil Case #80-1474.)

QUESTIONS PRESENTED

The questions presented, which were incorrectly and/or subject to judicial review, resolved by the United States Court of Appeals, for the Third Circuit, were:

1.Whether the Respondent's failure to file their brief within the thirty days, after receipt of the Petitioner's brief, mailed on April 16,1980 in accordance with U.S.C.O.A.,Letterof April 7, 1980, Rules 11(a) & 31(a) Appellate rules, were in default.

2. Whether the Respondent's failure to file a notice of appearance, in accordance with U.S.C.O.A. letter of April 7,1980 request to file within ten days and governing Rule 9, were in default.

3. Whether the Respondent's failure to respond to the the Contents of Appendix and Statement of Issues filed by the Petitioner on April 14, 1980, within the ten days(Rule 30(b).), were in default.

4.Whether the Respondent's reasons, noted in the following paragraph's, of this series of questions, were excusable, considering the large staff and facility ability of the Respondent's representative agencies, as compared, to the Petitioner's, Pro se, without counsel and money(s) to cope with the respondent's sources. The Reasons were as Follows:

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No._____
(U.S.C.O.A. (3rd Ckt.) Civil Case No. 80-1474.)

(P-2 Questions Presented (cont'd.):-

1. These Appellees have made no previous request for an extension of time.

2.Counsel for these Appellees are responsible for a large case load of Civil Service and Labor litigation in the Commonwealth of Pennsylvania.

3.Counsel, because of these matters have had scheduled many hearings during May and June.

4.Counsel for Appellees AFSCME has been contacted and has no objection to the request.

5.The Pro se Appellant, Mr Nicholas Mazur, has been contacted and he objected to this request.

6.The extension requested is not lengthy and shpuld not delay this action unduly.

7.While this matter was before the District Court, these Appellees had granted the Appellant an extension of some five weeks to file a response to their Motion to Dismiss.

8. No other party will suffer prejudice by reason of the requested extension.

9.Mr Walters is anxious to complete the preparation of this brief and submit it for the Court's consideration, and will be able to do so, if this court will grant an extension of time in which to file brief until June 3,1980.

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case NO_____
(U.S.C.O.A. (3rd . Ckt.) Civil Case No.80-1474).

(Question Presented -Cont'd.):-P3

10.Frank Fischer , Esquire, counsel for the Appellees has no objection to this request.

11. Nicholas Mazur, pro se , has been contacted and has expressed his objection , to this request.

12.Jonathan K. Walters, Esquire, the attorney in charge of this case was in the process of preparing the brief, for submission to the Court , in a timely manner. April 24, 1980, Mr Walters was advised of a death in his family, and has had to spend the past two weeks devoting a substantial portion of his time , to his family,

13. In January , 1980, Appellees had pending , before the United States District Court for the Eastern District of Pennsylvania, Motions to Dismiss this matter. At the time, that said Motions to Dismiss were being considered by the United States District Court for the Eastern District of Pennsylvania, Nicholas Mazur, requested an extension of time , in light of the fact that he was hospitalized.

14. Counsel for the Appellees had no objection to Mr Mazur's request , for an extension of time, in which to respond to Appellee's Motion to Dismiss then pending in the United States District Court for the Eastern District of Pennsylvania.

15. Whether the charges , by the Petitioner,Nicholas Mazur, against Appellees Counsel Jonathan Walters, of conduct unbecoming a member of the bar, under rule 46(b) ,was ignored by the Court due to pre-

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No._____
(U.S.C.O.A. (3rd ckt.) Civil Case no. 80-1474.)

(p4-Questions presented-cont'd.):

judice and discrimination actions, which were serious enough to be influencial in the United States Court of Appeals, for the Third Circuit.

15.Whether the suspected prejudice and discrimination influenced the Court's consideration of Rule 11(a) and not any of the supplementary/complementary rules, e.g. Rule 31(a) and Rule 30(b)., in ruling no default, three times and denying of relief to the Petitioner, Nicholas Mazur.

IN THE SUPREME COURT OF THE UNITED STATES
October .Term_____
Case No._____

AUTHORITIES

P-1 STATUTES, CASES, AND RULES INVOLVED

Statute(s):-	Page
U.S. Constitution Amendment- Article III	3
U.S. Constitutional Amendment I	3,& 11
U.S. Constitutional Amendment V	3, & 11
28 U.S.C. § 1343	3
28 U.S.C. § 1254(1)	4
28 U.S.C. § 1653	3
28 U.S.C. § 2101(e)	3 & 12
28 U.S.C. § 2101(d)	4

CASES:-

Bolling vs. Sharpe	3
Brown vs. Board of Education	3.& 14
Carter vs. Carter Coal Co.298 U.S. 238 (193¢)	3 & 13
Commonwealth Court vs. U.S. Court of Appeals	11
Dameron vs. Brodhead, 345 U.S. 322, 72 Ct. 721, 971 L.ed.1941(1963).	3 & 14
Ex Parte- Quinn 317 U.S. 1(1942)	3
Hawley vs. Hawley 114 F.2d,505, 72 App'd. 35	11
In Re Michigan-Ohio Bldg. Corp.117 F.2d 191	11
In Re Prindible,115 F.2d 191,2St at large 84,244	11

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____

Case No_____

AUTHORITY

P-2 (Statutes, Cases & Rules -cont'd.):-

Cases:-	Page
Maria Martin, 79 U.S. 31,12 Wall31,20 L.2d s51	11
Mayo vs. Lakeland Canning Co.309 U.S.C.310(1936).	3 & 4
Railroad Retirement Board vs. Alton R.Co.295, U.S. 330 (1935).	3
Rieckert Rose Mills vs. Fontenot 297 U.S.110(1936).	3
Terry vs. Adams 345 U.S. 461, 72,S.Ct899,97 L.ed 1152 (1952).	14
U.S. vs. Bankers Co. 294 U.S. 246 (1935)	12
U.S. vs. Corrick, 298 U.S. 435 (1935)	4
U.S. vs. Mine Workers 330 U.S. 258(1947)	3
Vachon vs. New Hampshire(1974) 414 U.S. 478	3 & 4

Rules:	Page
11(1)	5,8 & 12
18	12
27	13
30(b)	5,8 & 12
31(a)	5,8, & 12
46(b)	7

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No_____
(U.S.C.O.A. (3rd. ckt.) Civil case No. 80-1474.)

REASONS FOR GRANTING WRIT

1. Petitioner, Nicholas Mazur, Pro se, prays that the Court will grant his petition of writ of certiorari, before judgment in the United States Court of Appeals , for the Third Circuit, by order of June 10,1980, denying me the motion of default and relief, on three citations, as noted in the "Questions" section of this brief. (see In Re Prindible, 115 F.2d 21, 2 St at Large 84,244; In Re Michigan -Ohio Bldg. Corp.117 F.2d 191; Maria Martin, 79 U.S.31, 12 Wall 31,20 L. 2d s51; and, Hawley vs. Hawley,114 F.2d,505,72 App D.d.35).

The granting of the writ would be in the interest of the Petitioner, as well as the Nation, because of the order, June 10,1980(see Appendix A), by the United States Court of Appeals, for the third circuit, sets a precedence in the contradiciton of Judicial processes of the Courts. Courts have recognized "discrimination" may be unjustifiable as to violation of due processes.(U.S. Amendment 5, P1165).(see ruling of Commonwealth Court vs. U.S. Court of Appeals).

2. The Appellees seek to receive the compassion of the court, by noting the death in the family, in the early response period, of one of the Seven assigned Appellees legal counsel, not taking into consideration the resources that back them up; while on the other

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No_____

(Reasons-cont'd.)P-2

hand, the ,Petitioner, Pro se, has no facilities, counsel, or back-up, to rely on; yet, the Appellees denied the Petitioner,an extension of time to file, in the Commonwealth Court of Pennsylvania. Taking the over-played compassioned,plea, which is subject to question as to the allowable time, to attend to such matters, the Appellee's excuses are nothing but rhetoric, much less excusable.

3.The order of the Court, did not take into account, the number of defaults(3), involved, both in the early period of the "compassioned" plea period, entered in, by one of the legal consels, of the Appellees seven assigned counsel. The court gave no excusable reason, upon which the order was given.A letter issued by the Court, April 7,1980, (see Appendix B) noting filing times and Counsel Appearance requirements(Rule (9), and for Filing Rule 30(a) and 31, F.R.A.P. The petitioner in making his motion of default and relief, noted the Rules governing the time elements.The United States Court of appeals for the Third Circuit issued a letter May 21,1980(see Appendix C)stating judicial review would be in accordance to Rule 11(1), upon which the final order, in question , was generated. An obvious error in due process is hereby, pointed out to your court and for the record,to the Nation, which would set a precedent in judicial processes, if allowed to go unchallenge.(see Rule 18,;28 U.S.C. §2101(e); United States vs. Bankers Trust Co..294 U.S. 240(1935) -(cont'd.)

(Reasons (cont'd.)P-3:-

Carter vs. Carter Coal Co. 298 U.S. 238 (1936) ,re: Brown vs. Sharpe, and Brown vs. Board of Education, and, U.S. amendment 5, P1165- "Court recognized discrimination may be injustifiable as to violation of due processes).

Discrimination and prejudice, if gross enough, is equivalent to confirmation and subject under the fifth amendment to challenge and annulment.

6. PETITIONER FILE CHARGES, under Appellate procedural rules46(b), which incorporate " Conduct unbecoming a member of the Bar" of one, Jonathan K. Walters, Appellees counsel of threats of reprisals against the Petitioner, if an extension of time would not be given to him. The court took no action in their order, of said account.

7. The only means for the protection of the petitioner from injury during this court's action(s), is the immediate action, by this court, to preserve the status quo(see Appendix D- U.S. Court of Appeals , for the Third Circuit's letter of June 23,1980.). By such action, this Court will also protect its jurisdiction to deal with all the issues, presented in this case.(Rule 27, infra.).

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1980
Case No. _____

CONCLUSION

For the foregoing reasons, it is respectfully submitted:

1. This petition for a writ of certiorari should be granted. (See below)

2. This case should be scheduled , for judicial review, by the Supreme Court, at the earliest practical time, if possible, in the up-coming October Term.

3. An order should be issued , which would preserve the status quo, and protect the petitioner from un-repairable injury, pending final decision of this Court.

Additional reasons for granting Writ

a. Dameron vs. Brodhead, 345 U.S. 322, 73 S.Ct.721,97 L.ed 1941(1963).

b. Terry vs. Adams 345 U.S. 461, 73 S. Ct899. 97L.ed 1152(1953).

c. See Appendix "D"- June 23, Ltr.(U.S.C.O.A.(3rd. ckt.).)

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari, before judgment, be granted.

Nicholas Mazur

NICHOLAS MAZUR, PETITIONER_PROse

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
601 MARKET STREET
PHILADELPHIA 19106

THOMAS F. QUINN
CLERK

TELEPHONE
215-597-2995

June 10, 1980

Re: Mazur, Nicholas, Appellant vs. Commonwealth of Pennsylvania, Department of Transportation, Civil Service Commission, Governor's Administration Office, and American Federation of State, County and Municipal Employees Union (AFSCME)

No. 80-1474

Dear Counsel:

Enclosed herewith is conformed copy of order entered by the Court today in the above-entitled case.

Very truly yours,

T. F. Quinn, Clerk

FM:ds
Enclosure
Copies to all parties

APPENDIX "A" SHEET 1 Of 2

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 80-1474 May 30, 1980

MAZUR, NICHOLAS, Appellant

vs.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, CIVIL SERVICE COMMISSION, GOVERNOR'S ADMINISTRATION OFFICE, AND AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES UNION (AFSCME)

(D. C. Civil No. 79-4072)

Present: GIBBONS, WEIS and SLOVITER, Circuit Judges.

1. Motion by appellee, American Federation of State, County and Municipal Employees Union, for extension of time to file brief to June 3, 1980, in which it states that counsel for appellees, Commonwealth of Pennsylvania, et al., has no objection to this request,

2. Motion by appellees, Commonwealth of Pennsylvania, Department of Transportation, Civil Service Commission and Governor's Administration Office, for leave to extend time to file brief to June 4, 1980, in which it states that counsel for appellee, AFSCME, has no objection to the request,

3. Appellant's motion to quash Appellees' Motions for extension of time for filing briefs, in which it states that appellant requests under Rules 34(a)(3) and 34(e) that relief requested on page 4 of appellant's brief be granted and for Judgment by Default,

4. Appellant's "Motion for Relief",

in the above listed for Monday, June 9, 1980, or as the Court decides.

Respectfully,

Clerk

enc.
fm

The foregoing Motion(s) is/are 1 and 2 are granted. appellant's motions, 3 and 4 are denied

APPENDIX "A" Sheet 2 of 2

By the Court,

Judge

Dated: June 10, 1980

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
THOMAS F. QUINN
CLERK
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
601 MARKET STREET
PHILADELPHIA 19106
TELEPHONE
215-597-2995

Nicholas Mazur
819 North 21st Street
Allentown, PA 18104

April 7, 1980

Re: MAZUR, NICHOLAS,
Appellant.
vs.
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, CIVIL SERVICE COMMISSION, GOVENOR'S ADMINISTRATION OFFICE, AND AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES UNION (AFSCME)
(D.C. Civil No. 79-4072) -215-592-7272
No. 80-1474

Dear Mr. Mazur:

The above-entitled case was docketed in this Court at No. 80-1474 , and the record on appeal filed today.

The Statement of the Contents of the Appendix and Statement of issues presented are to be furnished to the appellee within ten (10) days from this date (see Rule 30 (b) of Federal Rules of Appellate Procedure); the brief for appellant and the appendix are to be filed and served within forty (40) days from this date (see Rules 30(a) and 31 of F.R.A.P.).

Very truly yours,

T. F. Quinn

T. F. Quinn, *Clerk* jj

jj:
Appearance: Enclosure

cc: Frank A. Fisher, Jr., Esq.
Asst. Attorney General
Office of the General Counsel
Dept. of Transportation
Harrisburg, PA 17120

Richard Kirschner, Esq.
Jonathan K. Walters, Esq.
1500 Walnut Street
Philadelphia, PA 19102

Michael E. Kunz, Clerk
Philadelphia, PA

IMPORTANT: ALL COUNSEL MUST FILE APPEARANCE FORM WITHIN TEN (10) DAYS FROM RECEIPT OF THIS NOTICE. SEE RULE 9 OF RULES OF THE THIRD CIRCUIT.

FPI-81—7-7-79 3K-2974

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
601 MARKET STREET
PHILADELPHIA 19106

THOMAS F. QUINN
CLERK

TELEPHONE
215-597-2995

May 21, 1980

Richard Kirschner, Esq.
Kirschner, Walters & Willig
1500 Walnut Street
Phila., Pa. 19102

Re: Nicholas Mazur, appellant
vs.
Commonwealth of Pennsylvania, et al.
No. 80-1474

Dear Mr. Kirschner:

Receipt is acknowledged on May 13, 1980 of 4 copies of motion by appellee, American Federation of State, County and Municipal Employees Union, for extension of time to file brief with certificate of service in the above-entitled case.

By copy of this letter, receipt is acknowledged from Mr. Fisher on May 14, 1980 of 4 copies of motion by appellees, Commonwealth of Pennsylvania, Department of Transportation, Civil Sercice Commission and Governor's Administration Office, to extend time to file brief with certificate of service in the above-entitled case.

By copy of this letter, receipt is acknowledged on May 15, 1980 of 26 copies of appellant's motion to quash appellees' motions for extension of time for filing briefs with certificate of service in the above-entitled case.

Pursuant to the provisions of Rule 11(1) of the Rules of this Court, you may assume that the motions will be considered June 9, 1980 and decided on your papers, and on any response which may be timely received, and that no oral argument will be heard unless you are so notified.

In the event that the Court or a Judge thereof requests oral argument, counsel will be notified as promptly as possible and will be expected to be present at the appointed time.

Very truly yours,

T. F. QUINN, Clerk

APPENDIX "C"

fm

Frank A. Fisher, Jr., Esq.
Asst. Attorney General
Commonwealth of Pennsylvania
Department of Transportation
Transportation and Safety Building
Harrisburg, Pa. 17120

Barbara Raup, Esq.
Asst. Attorney General
Civil Service Commission
Commonwealth of Pennsylvania
P. O. Box 569
Harrisburg, Pa. 17120

Mr. Nicholas Mazur
819 North 21st Street
Allentown, Pa. 18104

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
601 MARKET STREET
PHILADELPHIA 19106

THOMAS F. QUINN
CLERK

TELEPHONE
215-597-2995

June 23, 1980

Mr. Nicholas Mazur
819 N. 21st Street
Allentown, PA 18104

RE: MAZUR, Appellant v. PA Commonwealth, et al.
C. A. No. 80-1474

Dear Mr. Mazur:

On June 18, 1980 this office received an original and twenty-four (24) copies of your motion for summary judgment. We note that your motion is accompanied by a certificate of service on opposing counsel.

Please be advised that your motion, along with any response received from the appellees, will be presented to a panel of this Court sitting on or about August 4, 1980. You will be advised of the Court's decision in the regular course of our business.

Furthermore, we note that on the second page of your motion, you refer to an appeal to the United States Supreme Court. Please be advised that if you intend to seek review in the United States Supreme Court, you must correspond directly with Michael Rodak, Jr., Clerk of the United States Supreme Court in Washington, D.C.

Finally, you are advised that this office requires only an original and three (3) copies of motions submitted for disposition by the Court unless you are advised otherwise.

Very truly yours,

Thomas F. Quinn, Clerk

TFQ:MDB:EGM:clp
cc: Frank A. Fisher, Jr., Esquire

"APPENDIX "D"

APPEARANCE
(28 U.S.C. § 1654, and Rule 28.)

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No._____

(U.S.C.O.A. (3rd. Ckt.) Civil Case No. 80-1474.)

NICHOLAS MAZUR,
819 N. 21st Street,
Allentown, Pa. 18104
215-433-1587
APPELLANT AND PETITIONER -Pro se, : Case No._____
(U.S.C.O.A.(3rd.ckt.) Civil Case 80-1474).

vs.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, CIVIL SERVICE COMMISSION, and; GOVERNOR'sOFFICE OF ADMINISTRATION,
(and)
AMERICAN FEDERATION OF STATE, COUNTY, & MUNICIPAL EMPLOYEES UNION(AFSCME).,

APPELLEES AND DEFENDANTS ;

The Clerk will enter my appearance for the Appellant, Nicholas Mazur, Pro se.

(sign Nicholas Mazur

Type or Print Name: NICHOLAS MAZUR

Law Firm: PRO se

Proof of Service

I, Nicholas Mazur, Petitioner and Appellant, Pro se, hereby, certify that true and correct copies of the foregoing " Notice of Appearance" has been forwarded, this date, by first class, pre-paid mail to Appellees legal counsel and/or representatives.

Signed by:
Nicholas Mazur, Petitioner, Pro se

APPEARANCE
(28 U.S.C. § 1654, and Rule 28.)

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No._____

(U.S.C.O.A. (3rd. Ckt.) Civil Case No. 80-1474.)

NICHOLAS MAZUR, :
819 N. 21st Street,
Allentown, Pa. 18104 : Case No._____
215-433-1587
APPELLANT AND PETITIONER -Pro se, : (U.S.C.O.A.(3rd.ckt.)
Civil Case 80-1474).

vs. :
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION, CIVIL SERVICE COMMISSION, and;
GOVERNOR'sOFFICE OF ADMINISTRATION,
(and) :
AMERICAN FEDERATION OF STATE, COUNTY, & MUN_
ICIPAL EMPLOYEES UNION(AFSCME)., :

APPELLEES AND DEFENDANTS ;

The Clerk will enter my appearance for the Appellant, Nicholas Mazur, Pro se.

(sign Nicholas Mazur

Type or Print Name: NICHOLAS MAZUR

Law Firm: PRO se

Proof of Service

I, Nicholas Mazur, Petitioner and Appellant, Pro se, hereby, certify that true and correct copies of the foregoing " Notice of Appearance" has been forwarded, this date, by first class, pre-paid mail to Appellees legal counsel and/or representatives.

Signed by:
Nicholas Mazur, Petitioner, Pro se

IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No._____
(U.S.C.O.A.,3rd Ckt. Civil Case No. 80-1474)

CERTIFICATE OF SERVICE

I, Nicholas Mazur, Petitioner and Appellant, Pro se, hereby, certify, that true and correct copies of the foregoing "Petition for Writ of Certiorari" has been forwarded, this date, by First Class mail, postage, pre-paid, to:

Frank A. Fisher, Jr.
Assistant Attorney General,
Barbara G. Raup,
Assistant Attorney General,
Richard Thornburgh,
Governor,
Edward G. Biester,
Attorney General,
Ward T. Williams,
Chief Counsel,
Attorneys/representative of:
Respondents and defendants,
Commonwelath of Pennsylvania,
Department of Transportation,
Civil Service Commission,
Governor's Office of Administration
Office of Chief Counsel, T&S .Bldg;
Harrisburg, Pa. 17120.

(and) Richard Kirschner, Esq.
Jonathan K. Walters, Esq.
1500 Walnut Street,
Philadelphia,Pa. 19102
Attorneys for Respondents:
American Federation of State,
County & Municipal Employees
Union(AFSCME).

(and)

T.F. Quinn,Clerk
United States Court of
Appeals for the Third
Circuit, 214000 U.S.
Courthouse, 601 Market
Street, Philadelphia,
Pa.19106

SIGNED BY:

Nicholas Mazur

Nicholas Mazur, Petitioner
Date: June 25

BRUCE M. MOYER, NOTARY PUBLIC
ALLENTOWN, LEHIGH COUNTY
MY COMMISSION EXPIRES NOV. 15, 1982
Member, Pennsylvania Association of Notaries

Supplemental Appendix

UNITED STATES SUPREME COURT
CASE No. 79-2055

Supreme Court, U.S.
FILED
JUL 12 1980
MICHAEL RODAK, JR., CLERK

July 9,1980
819 N. 21st Street
Allentown,Pa. 18104
215-433-1587

Mr Michael Rodak, jr, Clerk
Office of the Clerk
Supreme Court of the United States
U.S. Supreme Court Bldg.
1 First Street, N.E.
Washington,D.C. 20543

Re: Mazur vs. Commonwealth of Pennsylvania, et al
and, American Federation of State, County, & Municipal Employees Union (AFSCME.
Case No. 79-2055 (U.S.C.O.A.(3rd. ckt.) 80-1474.).

Dear Mr Rodak:

In response to your letter of July 3, 1980, I have noted and completed the oversites/errors , as follows:

1.Certificate of Service was on page 22(last sheet of the brief), However I have enclosed copy thereof.

2.I have sent the Forms CO-75 to the respective Appellees, as requested, also, asking them to confirm receipt of "certified mail" per copy of postal receipts I have.(see enclosed.).

3 I have enclosed a copy of the U.S. District Court's Order as requested.

4.Also, I have enclosed an "Amened Findings of Facts-Judicial Opinn 76-3(2/23/76)., which was the basic plea and charges of' violation , thereof, by the Appellees's, which resulted in my termination/furloughing from Pa. Commonwealth Employment roles., I am sure if I had known of it in the earlier courts, my grievances, would have been granted relief thereof.

5. I appreciate your recognitionof Veteran's re-employment rights, which comes at a particular point of financial distress caused by the Appellees, over the two years of nemployment.

Thanking you for your cooperation, I remain.

Yours sincerely,
Nicholas Mazur
Nicholas Mazur, Pro se, Appellant-Petitioner.

United States Supreme Court
Case No 79-2055
(U.S.CO.A. (3rd. ckt.) 80-1474.)

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IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No._____
(U.S.C.O.A.,3rd Ckt. Civil Case No. 80-1474)

CERTIFICATE OF SERVICE

I, Nicholas Mazur, Petitioner and Appellant, Pro se, hereby, certify, that true and correct copies of the foregoing "Petition for Writ of Certiorari" has been forwarded, this date, by First Class mail, postage, pre-paid, to:

Frank A. Fisher, Jr.
Assistant Attorney General,
Barbara G. Raup,
Assistant Attorney General,
Richard Thornburgh,
Governor,
Edward G. Biester,
Attorney General,
Ward T. Williams,
Chief Counsel,
Attorneys/representative of:
Respondents and defendants,
Commonwealth of Pennsylvania,
Department of Transportation,
Civil Service Commission,
Governor's Office of Administration
Office of Chief Counsel, T&S .Bldg;
Harrisburg, Pa. 17120.

(and) Richard Kirschner, Esq.
Jonathan K. Walters, Esq.
1500 Walnut Street,
Philadelphia,Pa. 19102
Attorneys for Respondents:
American Federation of State,
County & Municipal Employees
Union(AFSCME).

(and)

T.F. Quinn,Clerk
United States Court of
Appeals for the Third
Circuit, 214000 U.S.
Courthouse, 601 Market
Street, Philadelphia,
Pa.19106

SIGNED BY:

Nicholas Mazur

Nicholas Mazur, Petitioner
Date: June 25

BRUCE M. MOYER, NOTARY PUBLIC
ALLENTOWN, LEHIGH COUNTY
MY COMMISSION EXPIRES NOV. 15, 1982
Member, Pennsylvania Association of Notaries

P16 6390925

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO: FRANK A. FISHER, ESQ., ET AL
STREET AND NO.: OFFICE OF CHIEF COUNSEL
P.O., STATE AND ZIP CODE: PENNDOT, T&S BLDG. HARRISBURG, PA 17120

POSTAGE		$ 1.39
CONSULT POSTMASTER FOR FEES		
OPTIONAL SERVICES	CERTIFIED FEE	.80 ¢
	SPECIAL DELIVERY	¢
RETURN RECEIPT SERVICE	RESTRICTED DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED	¢
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		$ 3.39
POSTMARK OR DATE		JUN 27 1980

PS Form 3800, Apr. 1976

P16 6390923

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO: T. F. QUINN, CLERK
STREET AND NO.: U.S. COURT OF APPEALS - 3RD CIR.
P.O., STATE AND ZIP CODE: 21400 U.S. COURTHOUSE, 601 MARKET STREET, PHILA., PA. 19106

POSTAGE		$ 1.86
CONSULT POSTMASTER FOR FEES		
OPTIONAL SERVICES	CERTIFIED FEE	.80 ¢
	SPECIAL DELIVERY	¢
RETURN RECEIPT SERVICE	RESTRICTED DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED	.45 ¢
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		$ 3.11
POSTMARK OR DATE		JUN 27 1980

PS Form 3800, Apr. 1976

P16 6390926

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO: GOV. RICHARD THORNBURGH
STREET AND NO.: CAPITOL BLDG.
P.O., STATE AND ZIP CODE: COMMONWEALTH OF PA. HARRISBURG, PA. 17120

POSTAGE		$ 1.86
CONSULT POSTMASTER FOR FEES		
OPTIONAL SERVICES	CERTIFIED FEE	.80 ¢
	SPECIAL DELIVERY	¢
RETURN RECEIPT SERVICE	RESTRICTED DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED	.45 ¢
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		$ 3.11
POSTMARK OR DATE		JUN 27 1980

PS Form 3800, Apr. 1976

P16 6390924

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO: MICHAEL RODAK, CLERK
STREET AND NO.: U.S. SUPREME COURT, SUPREME COURT BLDG.
P.O., STATE AND ZIP CODE: 1 FIRST ST. N.E. WASHINGTON, DC. 20543

POSTAGE		$ 5.15
CONSULT POSTMASTER FOR FEES		
OPTIONAL SERVICES	CERTIFIED FEE	.80 ¢
	SPECIAL DELIVERY	¢
RETURN RECEIPT SERVICE	RESTRICTED DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED	.45 ¢
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		$ 6.40
POSTMARK OR DATE		JUN 27 1980

PS Form 3800, Apr. 1976

- 2 -

P16 6390927

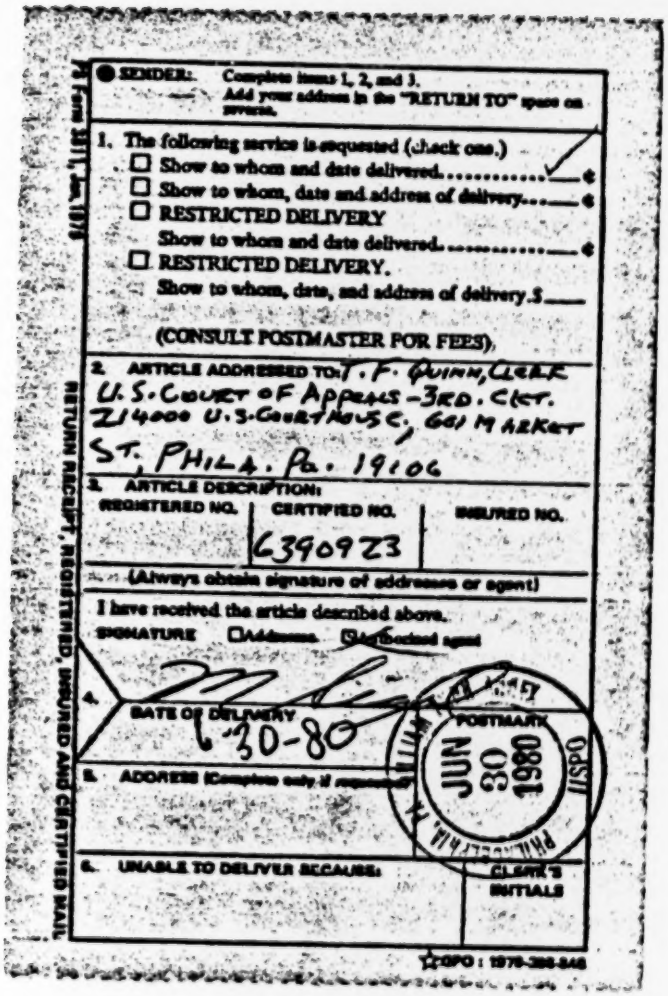
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO: J. K. WALKER, ESQ.
STREET AND NO.: LAW OFFICES, 1500 WALNUT ST.
P.O., STATE AND ZIP CODE: PHILA., PA. 19102

POSTAGE		$ 2.11
CONSULT POSTMASTER FOR FEES		
OPTIONAL SERVICES	CERTIFIED FEE	.80 ¢
	SPECIAL DELIVERY	¢
RETURN RECEIPT SERVICE	RESTRICTED DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED	¢
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		$ 2.91
POSTMARK OR DATE		JUN 27 1980

PS Form 3800, Apr. 1976



PS Form 3811, Jan. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered..... ¢
- ☐ Show to whom, date and address of delivery..... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered..... ¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery.$____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: T. F. QUINN, CLERK
U.S. COURT OF APPEALS - 3RD. CIR.
ZI 4000 U.S. COURTHOUSE, 601 MARKET
ST. PHILA. PA. 19106

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	639073	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐Addressee ☐Authorized agent

4. DATE OF DELIVERY 6-30-80

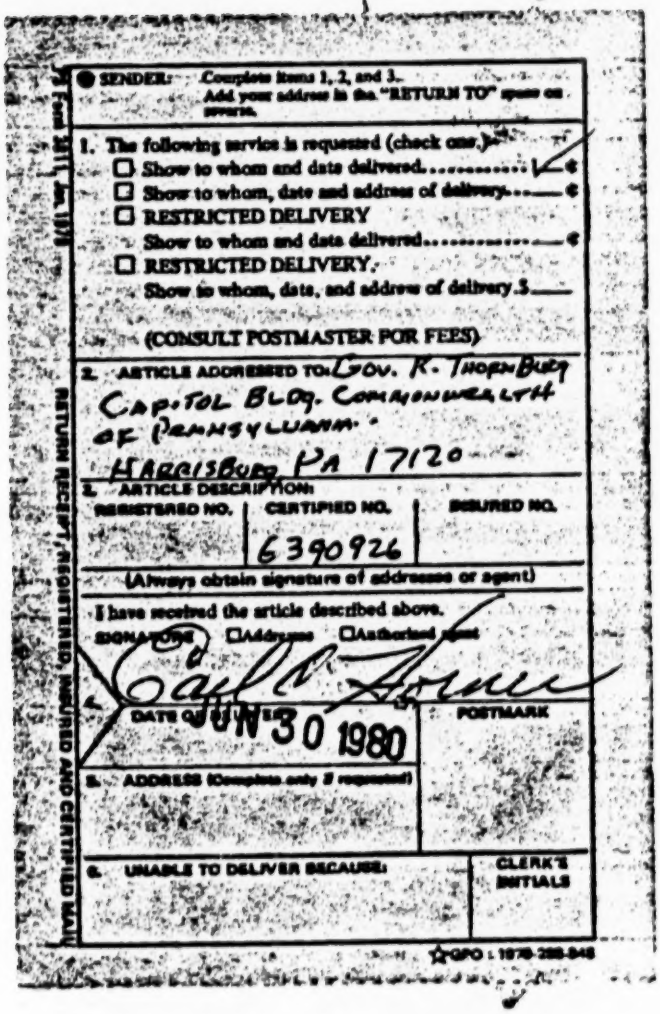
POSTMARK: PHILADELPHIA PA JUN 30 1980 USPO

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆GPO : 1978-288-848



SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered..... ¢
- ☐ Show to whom, date and address of delivery..... ¢
- ☐ RESTRICTED DELIVERY
- ☐ Show to whom and date delivered..... ¢
- ☐ RESTRICTED DELIVERY.
- ☐ Show to whom, date, and address of delivery.$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: Gov. K. Thornburg
Capitol Bldg. Commonwealth
of Pennsylvania
Harrisburg PA 17120

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	6390926	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

Carl R. Greene

4. DATE OF DELIVERY: JUN 30 1980 POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

PS Form 3811, Jan. 1979 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

☆GPO : 1979-288-848

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS MAZUR	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, CIVIL SERVICE COMMISSION, GOVERNOR'S ADMINISTRATION OFFICE and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME)	:	CIVIL ACTION NO. 79-4072

FILED

MEMORANDUM AND ORDER

TROUTMAN, J. MARCH 4, 1980

Plaintiff, a former real estate administrator with the Pennsylvania Department of Transportation, commenced this pro se action to challenge the failure of the Pennsylvania Supreme Court to consider his allegations that defendants denied him rights guaranteed by the Pennsylvania Public Employee Relations Act of 1970, 43 P.S. §1101.101 et seq. (Act 195), various provisions of the Pennsylvania Civil Service Act of 1941, 71 P.S. §741.1 et seq., and the Pennsylvania law giving preferences in employment to veterans, 51 Pa. Cons. Stat. Ann. §7101 et seq. Initially plaintiff filed charges of unfair labor practices against defendants with the Pennsylvania Labor Relations Board pursuant to Act 195. The Board, a Commonwealth administrative agency charged with the duty of enforcing the provisions of Act 195, dismissed the charges on January 29, 1979. Plaintiff then appealed to the Commonwealth Court of Pennsylvania, which construed the appeal as a petition for review in the nature of an appeal from the State Civil Service Commission. Relying upon Pa. R.A.P. 1512(a)(1),[1] the

[1] This rule reads: "Except as otherwise prescribed by Subdivision (b) of this rule: (1) A petition for review of a quasi judicial order, or an order appealable under 42 Pa.C.S.§763(b) (awards of arbitrators) or under any other provision of law, shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order." Plaintiff conceded that he did not comply with this rule, which the Court may not extend. Pa.R.A.P. 105(b).

Commonwealth Court dismissed plaintiff's petition as untimely. Plaintiff then filed a "motion to put aside the perfunctory defense ruling by the Court and respondents, and call for a summary judgment", which the Commonwealth Court dismissed in late April. Two weeks later plaintiff filed with the Pennsylvania Supreme Court a petition for allowance of appeal from the decision of the Commonwealth Court. On October 22, 1979, the Supreme Court denied plaintiff's petition. Plaintiff now seeks review in federal court of the state court determinations.

Plaintiff predicates jurisdiction in federal court upon Section 204 of the Appellate Court Jurisdiction Act of 1970, 43 Pa. Con. Stat. Ann. §211.204.[2] Apparently plaintiff views this forum as an appellate court to which he may appeal the refusal of the Pennsylvania administrative agencies as well as the Commonwealth and Supreme Courts of Pennsylvania to grant him relief. This Pennsylvania statute does not, and indeed cannot, create jurisdiction in federal court, for "federal courts possess limited jurisdiction, conferred only as the Constitution and Congress direct". Holman v. Carpenter Technology Corp., ____ F. Supp. ____, ____ (E.D. Pa. 1980). Due regard for the "rightful independente" of state governments requires federal courts to confine their

---

[2] The Judiciary Act Repealer Act of 1978, Act of April 28, 1978, P.L. 202, No. 53, repealed this Act. However, Section 724 of the Judicial Code, 42 Pa. Con. Stat. Ann. §724, substantially reenacts the provision, which now reads:

> Final orders of the Superior Court and final orders of the Commonwealth Court not appealable under section 723 ... may be reviewed by the Supreme Court upon allowance of appeal by any two justices of the Supreme Court upon petition of any party to the matter....
>
> If an appeal is improvidently taken to the Supreme Court under section 723 in a case where the proper mode of review is by petition for allowance of appeal under this section, this alone shall not be a ground for dismissal, but the papers whereon the appeal was taken shall be regarded and acted on as a petition for allowance of appeal and as if duly filed at the time the appeal was taken.

own jurisdiction to the precise limits established thereby. Victory Carriers, Inc. v. Law, 404 U.S. 202, 212 (1971).

Plaintiff's attempts to fit within these strictures remain unsuccessful. Plaintiff can avail himself of neither the Labor Management Relations Act, 29 U.S.C.§185, nor the Labor Management Reporting and Disclosure Act, 29 U.S.C.§401, for both acts specifically exclude from their purview public employees like plaintiff. See 29 U.S.C. §152(2) and §402(e).[3]

As recently noted in this district, "pro se pleadings should be approached with liberality. When an individual either cannot afford the services of an attorney or chooses to prosecute his claim himself ... courts must proceed painstakingly in an effort to discern the nature of plaintiff's claim and to insure that his lack of familiarity with legal proceedings does not result in his forfeiting a potentially valid claim. On the other hand, a judge may not become the surrogate attorney for a party, even one who is proceeding pro se. A pro se plaintiff must abide by the Federal Rules of Civil Procedure and when confronted by motions to dismiss must articulate reasons why the motions should not be granted". Tilli v. Capabianco, No. 79-931, slip op. at 1-2 (E.D. Pa. January 28, 1980). Accordingly, defendants' motion to dismiss will be granted.

---

[3] These provisions, respectively, read:

The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States ... or any State ....

"Employer" means any employer ... but does not include the United States ... or any State ....

July 9, 1980
819 N. 21st Street
Allentown, Pa. 18104
215-433-1587

Richard Kirschenr, Esq. &
J.K. Walters, Esq.
Law Offices
1500 Walnut Street,
Phila., Pa. 19102

Re; N. Nazur, Pro se, Appellant-Petitioner vs. Commonwealth of Penna. , & A.S.H., Appellees.
U.S. Supreme Court Case # 79-2055 (U.S.C.O.A. (3rd. Ckt.) 80-1074.)

Gentlemen:

I am enclosing U.S. Supreme Court form CO-75, for you to initiate the legal actions, noted therein, under docket no. 79-2055.

Your cooperation will be appreciated.

Thanking you in advance, I remain.

Yours sincerely,

Nicholas Nazur, Prose, Appellant

SUPREME COURT OF THE UNITED STATES

Nicholas Mazur, Pro se, Appellant-Petitioner
Appellant—Petitioner

vs.

American Feceration of State, County and Municipal Employees Union (AFSCME) & Commonwealth of Penna., et al; (Appellees
Appellee—Respondent

No. ~~79-2055~~

(U.S.C.O.A. (3rd ckt.) 80-1474)

To Richard Kirschner/C.J. Walters, Es., Counsel for Appellee—Respondent:

YOU ARE HEREBY NOTIFIED that an appeal—a petition for a writ of certiorari—in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the June day of 30, 19 80.

Nicholas Mazur

Nicholas Mazur, Pro se, Appellant-Petitioner
Counsel for Appellant—Petitioner

819 N. 21st Street,
Number and Street

Allentown, Pa. 18104 - 215-4331587
City, State and Zip Code

NOTE: Please indicate whether the case is an appeal or a petition for certiorari by crossing out the inapplicable terms. A copy of this notice need not be filed in the Supreme Court.

CO-75

July 9, 1980
819 N. 21st Street,
Allentown, Pa. 18104
215-433-1587

Frank A. Fisher, jr.
Assistant Attorney General
Office of Chief Counsel
Commonwealth of Penna.
T&S Building
Harrisburg, Pa. 17120

Re: N. Mazur, Pro se, Appellant, vs. Commonwealth of Penna, et al; Appellees; U.S. Supreme Court Case 79-2055 (U.S.C.O.A. Case 80 1174).

Dear Mr Fisher:

On June 27, 1980, (see certified mail #P1[illegible]-390925), I mail you 12 copies of My "Petition for Writ of Certiorari, before judgment", three copie to each of your staff (Naup; Williams & Biester). I sent three copies, in a separate envelope, to Gov. Thornburg.

I am, per copy of letter, to the Supreme Court, notifying them of said action. If you have not received them, I would appreciate you let ing me know, in order that I may notify the postal authorities.

Thanking you in advance, I remain.

Yours sincerely,
Nicholas Mazur
Nicholas Mazur, Pro se,
Appellant

P.S. U.S. Supreme Court Form; CO-75 is enclosed for your use and necessary legal action, as noted therein.

N.M.
N.M.

SUPREME COURT OF THE UNITED STATES

N. Mazur, Pro se, Appellant
Appellant—Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA - Department of Transportation, Civil Service Commission, Governor's Office of Administration & (AFSCME) Appellees
Appellee—Respondent

No. 79-2055
(U.S.C.O.A. (3rd Cir.) 80-1474)

To Frank A. Fisher, jr. Asst. Atty. Gen'l., Counsel for Appellee—Respondent:

You Are Hereby Notified that an appeal—a petition for a writ of certiorari—in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the June day of 30, 1980.

At the request of the Clerk of the Supreme Court, we are sending attached hereto an appearance form to be filed by you, or other counsel who will represent your party, with the Clerk at or before the time you file your response to our petition or jurisdictional statement.

Only those counsel who file an appearance form can expect to receive notification of the Court's action(s) in this case.

Nicholas Mazur
Nicholas Mazur, Pro se, Appellant-Petitioner
Counsel for Appellant—Petitioner

819 N. 21st Street
Number and Street

Allentown, Pa. 18104 -215-433-1587
City, State and Zip Code

NOTE: Please indicate whether the case is an appeal or a petition for certiorari by crossing out the inapplicable terms. A copy of this notice should not be filed in the Supreme Court.

CO-75

-81-

July 9,1980

UNITED STATES SUPREME COURT
CASE NO. 79-2055

APPENDAGE :

- Appendix "A'-Findings of Facts, Judicial Opinion 76-3 Dated 2/23/76.

- Appendix "B"- Appellees's Arbitration directive violating the Judicial Opinion's 76-3 basic interpretation and guidelines.

Signed by:

Nicholas Mazur, Pro se,
Appellant-Petitioner
819 N. 21st Street,
Allentown, Pa. 18104
215-433-1587

July 8 ,1980
819 N. 21st Street,
Allentown,Pa.18104
215-433-1587

Thomas Quinn, Clerk of Court
U.S. Court of Appeals for the
Third Circuit,
Room 21400 U.S. Courthouse
601 Market St;
Phila.,Pa. 19106

Re: N. Mazur, Pro se, Plaintiff/Appellant, vs.
Commonwealth of Pa.,et al and American Federation
of State,County & Municipal Employees Union(AFSCME).
Appellees/Defendants.

CASE No: 80-1474(U.S.C.O.A.(3rd.Ckt.)
(D.C. Civil ase no. 79-4072).

Dear Mr Guinn:

Enclosed you will find, the original, and twenty four(24) copies of an Motion for" Amendement of Finding of Facts" being submitted under Rules 6(b) and Rule 52(b) of Civil Procedures for entry within the ten days , prior to hearing date of August 4,1980.

By copy of this letter, I , Nicholas Mazur, Pro se,Appellant, certify that a copy of this Appeal will be sent to the Appellees's Legal counsel/Representatives, by first class mail, pre-paid postage.

Thanking you for your cooperation, I remain.

Yours sincerely,

Nicholas Mazur

Nicholas Mazur, Pro se,
Petitioner/Appellant

APPENDIX "A"
SHEET 1 of 21

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UNITED STATES COURT OF APPEALS
for the Third Circuit
Case No. 80-1474

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UNITED STATES COURT OF APPEALS
for the Third Circuit
Case No. 80-1474.

AUTHORITY

(Cases, Federal Application, &Civil Rules)

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Thomas vs. Metropolitan Life Ins. Co, ...	App'x. 50f 12
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Act of Aug.1,1975, P.L.216,51 Pa C.S. §7101	App'x. 2 of 12
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Military Code 51, Pa. C.S. §7107(1945)	4, App'x 3 of 12
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30(b)3	3
52(b)	3

United States Court of Appeals
For the Third Circuit
Case No. 80-1474
(D.C. Civil Case no 79-4072.)

FOR THE APPELLANT

NICHOLAS MAZUR, :

APPELLANT : Case No. 80-1474

v. : from

Commonwealth of Pennsylvania,et al. (D.C. Civil Case # 79-4072.)

and :

American Federation of State, County,
* Municipal Employees Union(AFSCME.) :

APPELLEES :

MOTION TO FILE AMENDED FINDINGS OF FACT

AND NOW, I, NICHOLAS MAZUR, Pro se, Appellant appeals to file a motion of amended "Findings of Facts " [1.] under the jurisdiction of Civil Rules 6(b); 30(b)3; and 52(b); which would grant me an extension of ten(10) days enlargement time, if needed. However, since my motion will be before your Court , within ten days of the hearing Of August 4, 1980, before the panel of your Court, I see no reason for an extension. However if the Court deems it necessary for an extension of time, please honor my request , herein.

1. Finding(s) of Fact are in Judicial Opinion NO.76-3, which may be found in the appendage section of" Motion for Amendment".

United States Court of Appeals
for the Third Circuit
Case No. 80-1474

STATEMENT OF FINDINGS OF Facts;
JUDICIAL OPINION no. 76-3

The findings of facts is dated February 23, 1976, wherein , the Attorney General Kane advised Hon George S. Pulakos, Secretary of the Pennsylvania Department of Transportation of the definition of the "soldier" and "war" and the seniority application and/or preference a soldier in the Armed Forces of the United States, under the Public Employment Act of May 22,1945,P.L. 837.51 P.S. ¶ ¶ 492.1 et seq. amended and the Military Act 51 Pa. C.S. ¶7107 the Commonwealth of Pennsylvania and the Union(AFSCME) were to honor. This Factual (case) Finding confirms my charge of Collusion between the Appellees(see My brief -Appendix page 28."Unilateral agreement between the Comm. of Pa. and AFSCME ,dated Apr. 11,1977 and P-49 , Arb. Case. dated 10/28/78) , but would be defined as a conspiracy, with malicious intent , and violating my civil rights under Section 9, U.S. Amendment 1 and "discrimination" as a result of the error of such action, under U.S. Amendment V, P1163 and U.S. Constitutional Article III.

Both parties knowing of all the facts and rules , as early as February 23,1976, could not have erred as flamboyantly, as they did.

The Appellant prays that in your judgment you will grant me the relief from my grievances as requested on Page 4, of the Aplant's brief dated April 15, 1980; submitted to your Court.

UNITED STATES COURT OF APPEALS
for the Third Circuit
Civil Case No. 80-1474
(D.C. Civil Case No. 79-4072).

APPENDAGE

FINDINGS OF FACTS

HEREWITH

DEPARTMENT OF JUSTICE
OFFICIAL OPINION No. 76-3

Opinion of the Attorney General Kane
to
Hon. George S. Pulakos, Acting Secretary
of the Pennsylvania Department of Transportation.

APPENDIX "A"

Military Employment Preference

Words and phrases—"War"—"Soldier"—Undeclared armed conflict—Preference in Public Employment Act—Veterans—Seniority.

1. The term "soldier" within the purposes of Chapter 71 of the Military Code (the preference in Public Employment Act of May 22, 1945, P.L. 837) means one who has served in the armed forces of the United States or women's organization officially connected therewith during a war or period of armed conflict such as Vietnam, in which the United States is involved.

2. The term "war" within the context of section 7107 of the Military Code means either a formally declared war, or an undeclared armed conflict.

3. The Military Code, 51 Pa.C.S. §7107, requires that whenever a reduction in force is necessary in any public position and personnel are discharged according to seniority, the total amount of seniority of any soldier as defined by Chapter 71 of the Military Code shall be determined by adding his amount of seniority in the civil service or public works to his total years of service in the armed forces of the United States or any women's organization connected therewith, during any declared war or armed conflict in which the United States was involved.

Opinion of the Attorney General to Hon. George S. Pulakos, Acting Secretary of Transportation. Department of Justice, Official Opinion No. 76-3.

KANE, *Attorney General*, February 23, 1976—We have received a request for an opinion from your department interpreting the Preference in Public Employment Act of May 22, 1945, P.L. 837, 51 P.S. §§492.1, et seq., as amended.[1] Specifically, you have asked whether a former soldier in the armed forces of the United States, or member of any women's organization connected therewith, may take advantage of the additional seniority provision of the Act, 51 Pa.C.S. §7107, if he or she served during a time of armed conflict rather than receiving credit for additional seniority only if he served during a time of declared war. You are hereby advised that a former soldier in the armed forces of the United States, or member of any women's organization connected therewith, is entitled to the additional seniority as provided in section

1. This statute was codified by the Act of August 1, 1975, P.L. 216, 51 Pa.C.S. §§7101, et seq., without change, and became effective January 1, 1976.

7107 of the Military Code if he or she served either during a time of armed conflict or of declared war.

Section 7107 of the Military Code reads:

"Whenever a reduction in force is necessary in any public position . . . and personnel are discharged according to seniority, the number of years of service of any soldier shall be determined by adding his total years of service in the civil service or on public works to his total years of service as a member of the armed forces of the United States, or any women's organization officially connected therewith *during any war in which the United States engaged.*" (Emphasis supplied.)

There are two issues that must be resolved prior to the resolution of your question; what is the definition of "soldier" within the code, and what is meant by the term "war" as it is used in section 7107 of the Military Code.

The term "soldier" was defined in the original 1945 Act as a "person who served in the armed forces of the United States or in any women's organization officially connected therewith, during any war in which the United States engaged . . . and who has an honorable discharge from such service." In 1945, the Act was amended to insert the words "or armed conflict" after "during any war." In 1966, the act was amended specifically to include Vietnam veterans. Finally, the act was amended in 1972 so that the term "soldier" is currently defined as:

". . . a person who served in the armed forces of the United States, or in any women's organization officially connected therewith, during any war or armed conflict in which the United States engaged, or who so served or hereafter serves in the armed

forces of the United States, or in any women's organization officially connected therewith, since July 27, 1953, including service in Vietnam, and who has an honorable discharge from such service." 51 Pa.C.S. §7101.

It is clear that the term "soldier" within the meaning of the act, is one who has served or who shall serve in the armed forces or connected women's organizations during a war or armed conflict, such as Vietnam.

The question of what was intended by the word "war" in section 7107 of the Military Code, poses a more difficult question. Did the General Assembly intend to limit it to a declared war only, or did it intend to include undeclared wars and armed conflicts between the United States and other sovereigns?

General definitions of "war" are not very helpful. Black's Law Dictionary defines "war" as:

"Hostile contention by means of armed forces, carried on between nations, states, or rulers, or between parties of the same nation or state . . . [or] a contest by force between two or more nations, carried on for any purpose or armed conflict or sovereign powers or declared and open hostilities, or the state of nations among whom there is an interruption of pacific relations, and a general contention by force, authorized by the sovereign." Black's Law Dictionary 1754 (4th ed. 1968).

Such a definition is hopelessly broad and does not relate to the statute in question.

Several Pennsylvania decisions have construed the term "war" in order to decide whether it is limited to declared wars or includes armed conflicts between the United States and other nations. In

Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A.2d 202 (1953), and Harding v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 220, 95 A.2d 221 (1953), the Pennsylvania Supreme Court considered the question of whether the beneficiary of a life insurance policy could collect double indemnity under a provision of the contract if the insured was killed in the armed forces during a time of war, where the insured was killed in the Korean conflict. In both cases, the court held that the action in Korea was not a war in the constitutional or legal sense of the word. The court implied that only a declared war could, in fact, be considered a war under the terms of the insurance contract. The rationale for the court's decision was that if the definition of "war" were expanded to include armed conflicts, then the courts would have no criteria to determine what was a war and what was merely shooting short of war. The court stated that:

"The existence or non-existence of a state of war is a political, not a judicial, question, and it is only if and when a formal declaration of war has been made by the political department of the government that judicial cognizance may be taken thereof." Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 237, 95 A.2d 202, 205 (1953).

In Thomas v. Metropolitan Life Insurance Co., 388 Pa. 499, 131 A.2d 600 (1957), the court again considered a claim by a life insurance beneficiary that he was entitled to an additional payment because the insured was killed in a war: the Korean conflict. The court stated that it was bound by its previous rulings in Beley and Harding supra and its

Beley v. Pennsylvania Mutual Life Insurance Co.,373 Pa. 231, 95A.2d 202(1953), And Harding v. Penna. Mutual Life Insurance Co; 373 Pa.270,95A.2d 221L1953), the Pennsylvania Supreme Court considered the question of whether the beneficiary of a life insurance policy could collect double indemnity under a provision of the contract, if the insured was killed in the armed forces during a war. where the insured was killed in the Korean conflict, in both cases, the court held that the action in Korea was not a war, in the constitutional or legal sense of the word. The court implied that only a declared war could, in fact, be considered a war under the terms of the insurance contract. The rationale for the court's decision was that if the definition of "war" were expanded to include armed conflicts, then the courts would have no criteria to determine what was a "war" and what was merely a shooting sort of a war. The court stated that:

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insurance contract. However, the majority took pains to limit its decision to the particular facts of the case. Further, the court, in adopting the lower court's opinion, admitted that:

"'It becomes very clear then that hostilities between nations can become war whether solemnly declared or not. War of the perfect kind, solemnly declared, is called declared war. War of the imperfect kind that has not been baptized with the name by Congress is known as undeclared war.'" Thomas v. Metropolitan Life Insurance Co., 388 Pa. 499, 507, 131 A. 2d 600, 604 (1957).

The court in Thomas interpreted Beley and Harding as defining two types of war, declared and undeclared. However, when interpreting the language of an insurance contract, for the sake of clarity and uniformity, the court held that the definition should be limited to that of a declared war.

In Morgan Estate, 2 D. & C. 2d 480 (Luz., 1954), the question arose as to the construction of section 1(b) of the Wills Act of April 24, 1947 (now Act of June 30, 1972, P.L. 508, as amended, 20 Pa.C.S. §2501), which allows a minor in the armed services, in time of war, to dispose of his property by will. The court, after acknowledging the Beley and Harding cases, announced that it would not be bound by their limited definition of "war." Instead, the court chose to define "war" in its popular sense, that is to include both declared and undeclared conflicts. The court (in an opinion by Orphans' Court Judge Benjamin R. Jones, now Chief Justice of the Pennsylvania Supreme Court) distinguished the previous cases by noting that here it was dealing with an enactment of the legislature and not with a private insurance contract.

Finally, other States and the Federal courts have

considered the definition of "war." In Morrison v. United States, 316 F. Supp. 78 (M.D. Ga., 1970), the question arose as to whether the Vietnam conflict was a war within the definition of the Federal Tort Claims Act. The act proscribes recovery for "[a]ny claim arising out of the combatant activity of the military or naval forces or the Coast Guard during time of war." 28 U.S.C. §2680(j), June 25, 1948, 62 Stat. 984, as amended. The court unanimously held:

"While it may be true that a de jure state of war cannot exist without a formal declaration of war, a war is no less a war because it is undeclared." 316 F. Supp. 78, 79 (M.D. Ga., 1970)

Several courts of other States have held likewise: Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 63 N.W. 2d 885 (1954); Western Reserve Life Insurance Co. v. Meadows, 152 Texas 559, 261 S.W. 2d 554 (1953); Stankus v. New York Life Insurance Co., 312 Mass. 366, 44 N.E. 2d 687 (1942); Stanbery v. Aetna Life Insurance Co., 26 N.J. Super. 498, 98 A. 2d 134 (1953).

The preceding cases, while not controlling, are helpful in our analysis. They acknowledge that war may be interpreted either narrowly or broadly, depending upon the construction which the framer intended. Surveying all of the cases,[2] Morgan Es-

2. Recently Commonwealth Court in Shank v. Everett Area School District No. 639 C.D. 1975 (Jan. 23, 1976), ruled that a man who volunteered for military service during the Vietnam conflict could not avail himself of section 1176 of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §11-1176, which permits a public school employe a leave of absence if he volunteers for duty "in time of war or during a state of national emergency." The court held that during the Vietnam conflict there was no declaration of

tate is clearly the most applicable to the question at hand as it is a Pennsylvania case construing a legislative enactment.

The Statutory Construction Act of November 25, 1970, P.L. 707, 1 Pa.C.S. §1924, permits the title and preamble of a statute to be considered when interpreting a statute. The original act, when passed in 1945, was titled:

"Providing for and requiring in certain cases preference in appointments to public position or on public works for honorably discharged persons who served in the military or naval service during any war in which the United States engaged . . ." Act of May 22, 1945, P.L. 837.

The 1955 amendment to the act specifically provided for the preference in hiring and retention of veterans of armed conflicts and not merely those men and women who served in time of declared war. The act has been amended twice since 1955 and on both occasions the title has included the above phrase. The title of the act is evidence that the General Assembly intended that veterans of

---

war or national emergency. The implication in Shank is that a conflict must be declared to be a war. However, Shank should not be viewed as controlling for several reasons. First, the court in Shank dealt with the Public School Code rather than Chapter 71 of the Military Code. This becomes even more significant when one realizes that the reasons for construing "war" to include an undeclared conflict in the Military Code do not exist in the Public School Code, i.e., the language that exists in the title to the Preference in Public Employment Act and the broad definition of the term "soldier" in the Code as are discussed later in the text of this opinion. Also, the court in Shank was never directly presented with, nor did it fully consider, the question of whether the Vietnam conflict fit within the definition of the word "war." Finally, the authorities previously cited in this opinion far outweigh the implications in Shank.

Sheet 8 of 12

armed conflicts, as well as those of declared wars, should be given seniority preference.

Further evidence of the intent of the legislature can be had by substituting the definition of the term "soldier" for the word "soldier" in the particular provision. Substituting the definition, the statute reads:

"Whenever a reduction in force is necessary in any public position, or on public works of the Commonwealth . . . the number of years of service of any [person who served in the armed forces of the United States . . . during any war or armed conflict in which the United States engaged] shall be determined by adding his total years of service in the civil service or on public works to his total years of service as a member of the armed forces . . . during any war in which the United States engaged." 51 Pa.C.S. §7107.

If the term "war" in this section is construed to include only a declared war, then the section loses its meaning. The statute, when interpreted in the above manner, allows preference for those who served in the armed forces during time of war or armed conflict but only if they served during a declared war. Such an interpretation makes little sense. A far more reasonable construction would allow preference for those who served either during an armed conflict or time of declared war. When seeking the intent of the legislature, there is always a presumption that the General Assembly did not intend a result which is absurd or unreasonable: 1 Pa.C.S. §1922(1).

A further question concerns the duration of a war or armed conflict; that is when, for the purposes of the act, does a conflict begin and end? Decisions that have dealt with the beginning of a war or

armed conflict have concluded that a war or conflict begins with the opening of hostilities: Stinson v. New York Life Insurance Co., 167 F. 2d 233 (D.C. Cir., 1948); New York Life Insurance Co. v. Bennion, 158 F. 2d 260 (10th Cir., 1946); Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A. 2d 202 (1953); Darnall v. Day, 240 Iowa 665, 37 N.W. 2d 277 (1949). Therefore, a war or armed conflict begins when the United States becomes involved in the hostilities.

Several courts also have considered the issue of the end of a war or armed conflict. It is clear that a declared war ends upon the cessation of hostilities rather than the signing of a formal peace treaty and Pennsylvania cases have so held: Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A. 2d 202 (1953); Harding v. Pennsylvania Mutual Life Insurance Co., 171 Pa. Superior Ct. 236, 90 A. 2d 589 (1952), affirmed, 373 Pa. 270, 95 A. 2d 221 (1953). The courts of other jurisdictions are in accord: New York Life Insurance Co. v. Durham, 166 F. 2d 874 (10th Cir., 1948); Stinson v. New York Life Insurance Co., 167 F. 2d 233 (D.C. Cir., 1948); Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 63 N.W. 2d 885 (1954). Further, although the preceding decisions dealt with declared wars, the language employed by the various courts makes it clear that they would apply the same logic to an undeclared conflict.

"[I]t is the common understanding that a war is no longer a war when the shooting is ended, regardless of official pronouncements . . . 'War in the practical and realistic sense in which it is commonly used, refers to the period of hostilities'.": Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 720, 63 N.W. 2d 885, 889 (1954).

Such a decision only makes sense. If an official

pronouncement is not necessary to begin an undeclared war, as is necessary to begin a declared war, there is no reason why an official pronouncement should be relevant to end an undeclared conflict if it is irrelevant to the end of a declared war.

For the purposes of the Military Code, a declared war or armed conflict begins with the opening of hostilities and ends with the cessation of the action. Using the above criteria, it is possible to determine the exact dates, for the purposes of the code, of recent conflicts involving the United States. World War I began with the declaration of war on Germany on April 6, 1917, and ended on November 11, 1918, with the signing of the peace treaty. World War II began with the attack on Pearl Harbor on December 7, 1941, and ended with the signing of the peace treaty with Japan on September 2, 1945. The duration of the Korean conflict was from June 25, 1950, when the North Koreans attacked to July 27, 1953, which was the date of the cease fire at Panmunjom. The Vietnam hostilities began on August 5, 1964, with the Gulf of Tonkin incident and ended with the signing of the Paris Peace Accord on January 28, 1973.

When attempting to define "war," one must keep in mind a historical perspective. The original act was passed in 1945. At that time the term "war" had quite a different connotation than it does today. In 1945, World War II had just ended and World War I was still recent history. All large scale conflicts were formally declared wars. Today the large conflicts of recent memory, Korea and Vietnam, were not declared wars; but were waged on a scale and intensity approaching that of previously declared wars.

Finally, when examining the history of the act, it can be seen that the act was broadened several

times by amendments. The major amendments were in 1955, 1965 and 1972. The 1955 amendment expanded the title of the act to include armed conflicts and also expanded the definition of "soldier" to include those who served during armed conflicts as well as declared wars. The 1965 and 1972 amendments again broadened the definition of "soldier" to specifically include Vietnam veterans. In short, the General Assembly has acted to expand the coverage of the act to include each of the major undeclared armed conflicts in the last 25 years in which the United States was involved. In order to effect the intent of the General Assembly, and to be consistent with the evolution of the act, a broad interpretation should be given to the term "war" as it is used in section 7107 of the Military Code.

In conclusion, it is our opinion, and you are hereby advised, that section 7101 of the Military Code, 51 Pa.C.S. §7107, should be interpreted as granting to those veterans who meet the act's definition of "soldier" additional seniority, to the extent of the time they served in the armed forces of the United States during a declared war or armed conflict in which the United States was involved.

In re Summit House

Taxation—Real property taxes—Condominium—Uniformity of assessment in comparison with similar tenanted properties.

The requirement of the Pennsylvania Constitution, article VIII, section 1, for uniformity of taxation upon the same class of subjects requires that the assessment of the total number of units in a condominium be no greater than the assessment of a comparable building occupied by tenants, despite the argument that the market value of all of the units in the condominium is greater.

Case no. 80-1474
United States Court of Appeals- Third Circuit

HISTORICAL CLASS/SENIORITY CHANGES, GENERATED FROM APPELLEES ACTIONS ON THE APPELLANT STATUS

Ref. no.	Class Holding	Time/Date In Effect	Seniority Class Standing	By What Directive or Achievement	Seniority Time Application Civil Service (Plus) Military (As of 8/4/80)	
1	R.E.SIV	4-10-77	#1 of 4	Civil Service	8YRS.4mos/3/days	3Yrs/7mos/10Days
2.	R/W ADM	8-29-77	#4 of 4	PennDot Ltr.8/29/77	none	3Yrs/7mos/10Days
3.	R.E.S.III	2-6-78	#6 of 11	PennDot Ltr.2/16/78	4Yrs/7mos/26days	2Yrs/3mos/16Days
4.	R.E.S.III	10-20-78	#9 of 11	Gov. Ofc.Arb. Case 10/20/78	none	2yrs.3mos/16Days
5..	R/W Adm or R.E.S.IV	8-4-80 U.S.Ct.of Appeals	#1 of 3	U.S. Court of Appeals hearing -8/4/80	8Yrs/4mos/3Days	3Yrs/7mos/10Days.

-18-

FLOW PROCESS CHANGE CHART FROM CLASS TO CLASS PER APPELLEES DIRECTIVES

Original Appellant'sCLASS achieved through Civil Service was R.E.S.IV.

Step(s)	Class		By What Directive and/or Achievement
1	R.E.S. IV		Civil Service Tests
2	R/W/ Adm.I to R.E.SIII (Pay grade Change)	and/or R.E.S.III(Suprv.) (No pay grade change)	PennDot Ltr. 3/29/77
4	R.E.S.III Loss of Civil Service Time	R.E.S.III(Suprv.) (no changes)	PennDot Ltr. 5/3/77 and AFSCME Ltr. 5/5/77. and. Gov. Ofc.Arb. Case 10/20/78

APPENDIX "B"

Original by Michael Shigun, Esq. for Appellant/Plaintiff

APPENDIX "C"

Honorable Discharge

FIDELI CERTA MERCES

from the Armed Forces of the United States of America

This is to certify that

NICOLAS VAZIR

was Honorably Discharged from the

United States Marine Corps

RESERVE

on the 22d day of March 1951. This certificate is awarded

as a testimonial of Honest and Faithful Service

Smiley Schultz

SMILEY SCHULTZ,

Captain, U. S. Marine Corps Reserve

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
Case no. 80-1474

Certificate of Service

I, NICHOLAS MAZUR, Pro se, Plaintiff/Appellant, hereby, certify, that a true and exact copy of the foregoing "Amendment of Findings of the Facts" has been forwarded , this date, by first class mail, pre-paid postage, to the follow :

Frank A. Fisher, Jr. Asst. Atty. Gen'l.:
Barbara g, Raup, " " "
Ward Williams, Chief Counsel :
Edward G. Biester, Attorney General
Gov. Richard Thirnburg :
Attorneys/Representatives of
Appellees, Commonwealth of Pa.: :
-Department of Transportation, Civil
Service Commission; Governor's :
Office of Administration, AND,
Office of Chief Counsel
Harrisburg, Pa. 17120

Richard Kirschner, Esq.
J.K. Walters, Esq;
Law Offices, 1500 Walnut St;
Phila., Pa. 19102
Attorneys for Appellees,
American Federation State,
County & Municipal Emm-
ployees Union(AFSCME.)

Signed by
Nicholas Mazur
Nicholas Mazur, Pro se
Plaintiff/Appellant.
Date: 7-8-80

Mary P. Heimbach
MARY P. HEIMBACH, NOTARY PUBLIC
ALLENTOWN, LEHIGH COUNTY
MY COMMISSION EXPIRES DEC. 13, 1983
Member, Pennsylvania Association of Notaries

7/9/80

UNITED STATES SUPREME COURT
Case No. 79-2055
(U.S.C.O.A. (3rd. ckt.) 80-1474.)

APPENDIX "B"

Appellees Arbitration directive violating the Judicail Opinion's 76-3(2/23/76) basic interpretation and guidelines.

Signed By:
Nicholas Mazur

Nicholas Mazur, Pro se,
Appellent- Petitioner
819 N. 21st Street,
Allentown, Pa. 18104

S-4

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
October 20, 1978

V REFER TO

PAT. 1723 334M 166122803

N. MAZUR
308 W. CENTER ST.,
SHENANDOAH, PA. 17976

PA
17901

U.S. SUPREME COURT ATTENTION REQUESTED HERE!!!

NOTE: VIOLATION OF JUDICIAL OPINION 76-3
DATED: 2/23/76 - ATTY. GEN'L. KANE O.P.
U.S. SUPREME COURT ACTION TOOK AWAY CIVIL/PUBLIC SERVICE TIME THAT SHOULD HAVE BEEN ADDED TO "SOLDIER'S" MILITARY TIME
SEE "MOTION FOR AMENDED FINDINGS OF FACTS."

Based on several grievances submitted by AFSCME, the Department of Transportation recently received an Arbitration decision concerning the implementation of furloughs and the calculation of seniority for employes affected by furloughs on June 30, 1978 and September 1, 1978. The arbitrator ruled that seniority credit for employes in the Transportation Construction Inspector 3 class was improperly calculated. This also affects Real Estate Specialist Supervisors and Real Estate Appraisers 3. This resulted from Executive Board classification changes which in turn created bargaining unit changes for employes in these classifications.

The arbitrator ruled that the bargaining unit seniority these employes earned prior to the classification changes should not have been credited toward the bargaining unit seniority earned after the classification and bargaining unit changes were made. As a result, the Department was directed to recompute seniority for these affected individuals and consequently to determine who should have been furloughed or bumped based on these new seniority calculations.

As a result, some employes were improperly furloughed or bumped. Correspondingly, some employes were improperly retained or bumped. You are one of the employes affected by this recalculation and were improperly retained. Therefore, in order to comply with the arbitrator's decision, we have been directed to reinstate another employe in your classification who was improperly furloughed. You regrettably, must be furloughed instead. This furlough will be effective at the close of business November 1, 1978. Your District Office will meet with you to answer any questions you may have as well as to discuss and provide counseling relative to your furlough status.

I sincerely regret that this action is necessary, but we, unfortunately, have no choice based on the arbitration decision. You have 20 days from the receipt of this letter to file an appeal with the

APPENDIX "B"

State Civil Service Commission regarding this action, if you choose to do so. An extract from the Civil Service Act explaining your appeal rights is attached.

Very truly yours,

John Harhigh, Director
Bureau of Personnel

Attachment

R 84

APPENDIX "B"

Date Prepared 10-20-78

District Central Office

Class Title Real Estate Spec. III-1723

Parenthetical

Bargaining Unit B-1

"B" List (Bumping List, All Current Incumbents of Class Plus Those Eligible to Bump)

Name	Bargaining Unit Service Date	Action Taken/ Other Classes
Prinkey, M. P.	11-10-63	* RE-INSTATEMENT BY FEDERAL
Walter, J. H.	9-10-66	COURTS REQUESTED WOULD BE
Reefer, J. H.	6-5-69	AS FOLLOWS +
Shenk, F. T.	5-20-71	N. MAZUR - R/W ADM. - 9-12-68
Romig, M. V.	9-15-71	J. H. REEFER 6-5-69
Gross, R. C.	1-22-72	F. T. SHENK 5-20-71
Lehr, D. W.	8-11-72	U. M ROMIG 9-15-71
Seitz, D.	9-6-72	R. C. GROSS 1-22-72
ur, N.	7-27-75	D. W. LEHR 8-11-72
l, R. D.	3-3-77	D. R. PAUL 3-3-77

U.S. SUPREME COURT IS ATTENTION IS CALLED HERE *

* THE REVISED STANDING, LISTED ABOVE, WOULD BE APPROXIMATELY THE SENIORITY STANDINGS, IF U.S. SUPREME COURT MAKES THE STATE OF PA. HONOR THE JUDICIAL OPINION # 76-3, 2/23/76, 73 D&C, P741 to P752.

10/20/78

ARBITRATION AWARD FACT SHEET

I. Seniority Dates

A. Those employes improperly furloughed who are returning to work will have seniority credited as if they never left.

B. Those eligible to return but who do not accept reemployment will have seniority credited retroactive from November 3, 1978 to their furlough date. If did not return October 23, 1978, show as LWOP but still give seniority credit.

C. Those eligible to return but do not because they would be furloughed on November 8, 1978 will be shown as LWOP from October 23, 1978 to November 8, 1978, furloughed at close of business November 8, 1978 and will have seniority credit to November 8, 1978.

D. Employes improperly bumped are restored to their proper levels effective October 23, 1978. However, their seniority is to be credited toward what should have been their proper class and/or bargaining unit retroactive to their original "improper" bumping date (July 1, 1978 or September 2, 1978). This applies to both downward and upward restoration.

II. Recall Provisions

A. Those employes furloughed on November 1, 1978 will have three years of recall rights starting from the date they should have been furloughed, either July 1, 1978 or September 2, 1978. They will be merged with persons on recall lists from those dates. For recall purposes only, seniority credit earned after the furlough date will be subtracted so that their relative seniority with others furloughed on either July 1, 1978 or September 2, 1978 remains consistent.

B. Employes improperly furloughed who choose not to return to work lose recall rights because they refused recall.

C. Employes improperly furloughed, who could come back, but do not because they will be furloughed on November 8, 1978 are treated as if furloughed on November 8, 1978.

D. Recall rights for employes who are bumped to lower levels on October 23, 1978 begin on the date they should have been bumped, either July 1, 1978 or September 2, 1978. For example, a Trans. Const. Insp. 3 who was bumped to Trans. Const. Insp. 2 on October 23, 1978, but who should have bumped on September 2, 1978, will have recall rights to Trans. Const. Insp. 3 which begin retroactive to September 2, 1978 and continue for three years.

APPENDIX "B"

Docket No. 79-2055
United States Supreme Court

Notice Under Rule 10(4)

Nicholas Mazur, Appelkant,
vs.
Commonwealth of Penna., et al
and AFSCME, Appellees

To: Mr Michael Rodak, Jr,
Clerk of the Court.

Pursuant to Rule 10(4) of the Rules of the Supreme Court of the United States, you are hereby notified that Appellant believes that Appellees "American Federation of State, County, and Municipal Employees Union" have no personal interest in the outcome of this appeal, by their lack of "Notice of Appearance in the Supreme Court", and the Commonwealth of Pennsylvania, et al , by their Waiving of Appeal.

Respectfully submitted,

Nicholas Mazur, Pro se,/Appellant
819 N. 21st Street,
Allentown,Pa. 18104
215-433-1587

Supreme Court, U.S.
FILED
AUG 8 1980
MICHAEL RODAK, JR., CLERK

Docket No. 79-2055
United States Supreme Court

NICHOLAS MAZUR,
APPELLANT/PRO se
vs.
Commonwealth of Pennsylvania,
Department of Transportation,
Civil Service Commission,
Govenor's Administration Office,
and American Federation of State,
County, and Municipal Employees Union,
(AFSCME,),
Appellees.

Brief Supplement of Appellant
Nicholas Mazur

Denial of Motion, July 31, 1980, Case No. 80-1474
From the U.S. Court of Appeals, for the Third Circuit.

Appellees:
R. W. Cunliffe,Deputy Chief Counsel,
W. Williams, Chief Counsel,
R. Thornburgh, Govenor of Penna.,
F. A. Fisher, Asst. Atty. General,
E.G. Biester,Jr, Atty. General,
Office of Chief Counsel
Dept. of Transportation
Commonwealth of Penna.
Harrisburgh, Pa. 17120, and,
R. Kirschner, Esq.,
J.K. Walters, Esq.
1500 Walnut Street,
Philadelphia, Pa. 19102, and,
T.F. Quinn, Clerk
U.S. Court of Appeals, for the
Third Circuit,
21400 U.S. Courthouse
Phila.,Pa. 19106

NICHOLAS MAZUR, APPELLANT.
819 N. 21st Street,
Allentown,Pa. 18104
215-433-1587.

Docket No. 79-2055
United States Supreme Court

August 6, 1980
819 N. 21st Street,
Allentown,Pa. 18104
215-433-1587

Michael Rodak, Jr.,Clerk
Office of the Clerk
United States Supreme Court
1 First Street, N.E.,
Washington, D.C. 20543

Re: N. Mazur, Appellant, vs.
Commonwealth of Pennsylvania,
Department of Transportation,
Civil Service Commission,
Governor's Office of Administrarion,
and, AFSCME,..Appellees
Docket No. 79-2055
(U.S.C.O.A. (3rd. ckt.) Civil Case
801474.).

Dear Mr Rodak:

Enclosed for filing, please find a supplement to my brief Of " Writ of Certiorari, before judgment" in the above captioned matter, containing a motion denial, dated July 31,1980, from the U.S. Court of Appeals(3rd. Ckt.) , Case No. 80-1474.

Supplement is to be included in the broad powers of Certiorari, for judicial review and decision for granting relief to the Appellant.

Thaniing you for your cooperation on said matter.

Very truly yours,
Nicholas Mazur
Nicholas Mazur,
Appellant/Pro se.

cc: R. W. Cunliffe,
J.K. Walters,
B. Raup,
W. Williams,
F. Fisher,
R. Kirschner,
E. Biester,
T.F. Quinn, Clerk(U.S.C.O.A.).

Docket No. 79-2055
United States Supreme Court

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Docket No. 79-2055

United States Supreme Court

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Docket No., 79-2055
United States Supreme Court

JURISDICTION

Jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1253 ; § 1254 (2) & § 2103.

Wherein, there are two separate judgments, one reviewable, by Appeal, and the other by Certiorari. Petition for Writ of Certiorari, before judgment, has been , previously, filed, to which this supplement, U.S. Court of Appeals , for the Third Circuit, motion denial of summary judgment, dated July 31,1980; is to considered in the broad powers of judicial review by Certiorari.

Jurisdictional review , by the Supreme Court of final judgment or decree rendered by lower Courts may be conducted, where the validity of statutes , of any state, on the ground of its' being repugnant to the Constitution, treaties, or Laws of the Unites States , and the decision is in favor of validity.

Docket No. 79-2055
United States Supreme Court

PROOF OF SERVICE

I, NICHOLAS MAZUR, Pro se, Appellant,, hereby, certies, that, true and correct copies of foregoing " supplement to my brief, " Motion denial of summary judgment from U.S.C.O.A. third circuit, and attachments" has been forwarded, this date, by first class mail, postage pre-paid, to :

R. W. Cunliffe,Deputy to Chief Counsel,
B. Raup, Asst. Atty. General,
F. Fisher, Asst. Atty General.
W. Williams, Chief Counsel,
E. Biester, Atty. General.
R. Thornburgh, Governor.
Commonwealth of Penna.
Office of Chief Counsel
Department of Transportation
Harrisburg, Pa. .. and,
R. Kirschner, Esq.,
J.K. Walters, Esq.,
1500 Walnut Street,
Phila.,Pa. 19102... and,
T. F. Quinn, Clerk
U.S. Court of Appeals, 3rd ckt.,
Phila.Pa. 19106

Signed by:
Nicholas Mazur
Nicholas Mazur,
Appellant/Pro se
819 N. 21st Street,
Allentown,Pa. 18104
August 6, 1980

Signed before me this 6th day of August 1980
at Allentown, Pa.
[illegible], Notary Public
My Commission expires 16 June 1984

Docket No. 79-2055
United States Supreme Court

Nicholas Mazur,	:	
Appellant,	:	
vs.	:	Docket No. 79-2055
Commonwealth of Pennsylvania,	:	(U.S.C.O.A. (3rd. ckt.)80-1474.)
Department of Transportation,	:	
Civil Service Commission,	:	
Governor's Administration Office,	:	
and, American Federation of State,	:	
County, and Municipal Employees,	:	
(AFSCME),	:	
Appellees	:	

Supplement to Appellant's Brief "Writ of Certiorari, before Judgment".

Notice is hereby given, this Wednesday, August 6,1980, that, Nicholas Mazur, Pro se, Appellant, hereby submits as a supplement, the United States Court of Appeals, for the Third circuit, Motion of Denial of Summary Judgment, requested by the Appellant., which is to be filed with my brief requesting Petition for Writ of Certiorari, for judicial review under the broad and encompassing powers of Certiorari. Conditions granting Certiorari exists in the proceedings of lower Courts, in support of Appellant's request(s) are as follows:

(1). Overriding of defaults and granting with discrimination, which would be controversial to accepted and usual course of judicial proceedings.(see U.. S. Constitutional Amendment V, P1163; Carter vs. Carter Coal Co, 298 U.S. 238(1936); Brown vs. Board of Education;Bolling vs. Sharpe.)

P-2(cont'd.):

(2). When a Federal Court of Appeals has rendered a decision , in conflict with the decision of another Federal Court of Appeals, on the same matter, or has decided a Federal questionin a way in conflict with a State Court of Last Resort, or has so far departed from the accepted and usual course of Judicial proceedings , or so far sanctioned such a departure, by a lower Court, as to call for an exercise of this Court's power of supervision. (see Amendment V of U.S. Consitution.).

(3).When a state court or a Federal Court of Appeals has decided an important question of Federal Law, which has not been, but should be, settled by this Coirt, or has decided a Federal question in a way in conflict with applicable decisions of this Court. (see Appendix" A" of this Brief-Dept. of Justice Official Opinion No. 76-3-Kane vs. Pulakos,Pa. Dept. of Transp.; and, Appendix " B" of this brief- Pa. Arbitration decision-10/20/78.)

SUMMARY

Petition for Review by Writ of Certiorari, before judgment, should be granted upon case being of imperative Public importance, as to justify the deviation from normal Appellate practice and to require settlement , in this Court.(see Rule 18; 28 U.S.C. § 2101; U.S. vs Bankers Trust co. 291U.S.240(1935); Railroad Retirement Bd. vs. Alton R. Co.295U.S. 330(1935);

SALLY MRVOS
THOMAS F. QUINN
CLERK

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
601 MARKET STREET
PHILADELPHIA 19106

TELEPHONE
215-597-2995

July 31, 1980

Re: Mazur, Nicholas, Appellant vs. Commonwealth of Pennsylvania, etc., et al.

No. 80-1474

Gentlemen:

Enclosed herewith is conformed copy of order entered by the Court today inthe above-entitled case.

Very truly yours,

Sally Mrvos

Sally Mrvos, Clerk

MRF:sms
Enclosure
Copies to all Parties

Page 6a

July 14, 1980

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 80-1474

MAZUR, NICHOLAS,
Appellant
vs.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, CIVIL SERVICE COMMISSION, GOVERNOR'S ADMINISTRATION OFFICE, AND AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES UNION (AFSCME)

(E.D. Pa. Civ. No. 79-4072)

Present: ALDISERT and SLOVITER, Circuit Judges

Submitted is appellant's motion for summary judgment

in the above-captioned case listed for August 4, 1980 or as the Court decides.

Respectfully,

Clerk

TFQ:MDB:clp
cnc:

The foregoing Motion is/are Denied

By the Court,

Judge

Dated: July 31, 1980

RELIEF REQUESTED BY THE APPELLANT

And Now, Nicholas Mazur, Appellant/Pro se, prays for relief, from the Court, from the grievances caused by the Appellees, they are:

(a). Re-instatement to the Pennsylvania Civil Service Register and Employment rolls, at the entrance Level, or higher, as a Real Estate Administrator I, with the seniority time earned in the service of the Commonwealth of Pennsylvania, which would be from April 22,1972 to date of return, plus my military time */5//43 to 6/28/46 and 2/1/48 to 3/22/51, from which I was honorably discharged .

(b) re-imbursement for loss wages at double my earnings, in accordance with state law, at $50,000 per year for ten years, covering my time to age 65.

(c). Upon return to the rolls, I am to be immediately put on employment disability , at maximum rate, since the trauma harassment , tension, and anxiety has now made me 100% disabled.

(d). Re-imbursement for duplicating costs; office expenses; secretarial services, over the two years , amounting to $45,000.00.

Signed by:
Nicholas Mazur,
Appellant/Pro se.

Docket No. 79-2055
United States Supreme Court

APPENDIX

FINDINGS OF FACTS

HEREWITH

DEPARTMENT OF JUSTICE
OFFICIAL OPINION No. 76-3

Opinion of the Attorney General Kane
to
Hon. George S. Pulakos, Acting Secretary
of the Pennsylvania Department of Transportation.

APPENDIX "A"

Military Employment Preference

Words and phrases—"War"—"Soldier"—Undeclared armed conflict—Preference in Public Employment Act—Veterans—Seniority.

1. The term "soldier" within the purposes of Chapter 71 of the Military Code (the preference in Public Employment Act of May 22, 1945, P.L. 837) means one who has served in the armed forces of the United States or women's organization officially connected therewith during a war or period of armed conflict such as Vietnam, in which the United States is involved.

2. The term "war" within the context of section 7107 of the Military Code means either a formally declared war, or an undeclared armed conflict.

3. The Military Code, 51 Pa.C.S. §7107, requires that whenever a reduction in force is necessary in any public position and personnel are discharged according to seniority, the total amount of seniority of any soldier as defined by Chapter 71 of the Military Code shall be determined by adding his amount of seniority in the civil service or public works to his total years of service in the armed forces of the United States or any women's organization connected therewith, during any declared war or armed conflict in which the United States was involved.

Opinion of the Attorney General to Hon. George S. Pulakos, Acting Secretary of Transportation. Department of Justice, Official Opinion No. 76-3.

KANE, *Attorney General*, February 23, 1976—We have received a request for an opinion from your department interpreting the Preference in Public Employment Act of May 22, 1945, P.L. 837, 51 P.S. §§492.1, et seq., as amended.[1] Specifically, you have asked whether a former soldier in the armed forces of the United States, or member of any women's organization connected therewith, may take advantage of the additional seniority provision of the Act, 51 Pa.C.S. §7107, if he or she served during a time of armed conflict rather than receiving credit for additional seniority only if he served during a time of declared war. You are hereby advised that a former soldier in the armed forces of the United States, or member of any women's organization connected therewith, is entitled to the additional seniority as provided in section

1. This statute was codified by the Act of August 1, 1975, P.L. 216, 51 Pa.C.S. §§7101, et seq., without change, and became effective January 1, 1976.

7107 of the Military Code if he or she served either during a time of armed conflict or of declared war.

Section 7107 of the Military Code reads:

"Whenever a reduction in force is necessary in any public position . . . and personnel are discharged according to seniority, the number of years of service of any soldier shall be determined by adding his total years of service in the civil service or on public works to his total years of service as a member of the armed forces of the United States, or any women's organization officially connected therewith *during any war in which the United States engaged.*" (Emphasis supplied.)

There are two issues that must be resolved prior to the resolution of your question; what is the definition of "soldier" within the code, and what is meant by the term "war" as it is used in section 7107 of the Military Code.

The term "soldier" was defined in the original 1945 Act as a "person who served in the armed forces of the United States or in any women's organization officially connected therewith, during any war in which the United States engaged . . . and who has an honorable discharge from such service." In 1945, the Act was amended to insert the words "or armed conflict" after "during any war." In 1966, the act was amended specifically to include Vietnam veterans. Finally, the act was amended in 1972 so that the term "soldier" is currently defined as:

". . . a person who served in the armed forces of the United States, or in any women's organization officially connected therewith, during any war or armed conflict in which the United States engaged, or who so served or hereafter serves in the armed

forces of the United States, or in any women's organization officially connected therewith, since July 27, 1953, including service in Vietnam, and who has an honorable discharge from such service." 51 Pa.C.S. §7101.

It is clear that the term "soldier" within the meaning of the act, is one who has served or who shall serve in the armed forces or connected women's organizations during a war or armed conflict, such as Vietnam.

The question of what was intended by the word "war" in section 7107 of the Military Code, poses a more difficult question. Did the General Assembly intend to limit it to a declared war only, or did it intend to include undeclared wars and armed conflicts between the United States and other sovereigns?

General definitions of "war" are not very helpful. Black's Law Dictionary defines "war" as:

"Hostile contention by means of armed forces, carried on between nations, states, or rulers, or between parties of the same nation or state . . . [or] a contest by force between two or more nations, carried on for any purpose or armed conflict or sovereign powers or declared and open hostilities, or the state of nations among whom there is an interruption of pacific relations, and a general contention by force, authorized by the sovereign." Black's Law Dictionary 1754 (4th ed. 1968).

Such a definition is hopelessly broad and does not relate to the statute in question.

Several Pennsylvania decisions have construed the term "war" in order to decide whether it is limited to declared wars or includes armed conflicts between the United States and other nations. In

Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A.2d 202 (1953), and Harding v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 220, 95 A.2d 221 (1953), the Pennsylvania Supreme Court considered the question of whether the beneficiary of a life insurance policy could collect double indemnity under a provision of the contract if the insured was killed in the armed forces during a time of war, where the insured was killed in the Korean conflict. In both cases, the court held that the action in Korea was not a war in the constitutional or legal sense of the word. The court implied that only a declared war could, in fact, be considered a war under the terms of the insurance contract. The rationale for the court's decision was that if the definition of "war" were expanded to include armed conflicts, then the courts would have no criteria to determine what was a war and what was merely shooting short of war. The court stated that:

"The existence or non-existence of a state of war is a political, not a judicial, question, and it is only if and when a formal declaration of war has been made by the political departments of the government that judicial cognizance may be taken thereof." Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 237, 95 A.2d 202, 205 (1953).

In Thomas v. Metropolitan Life Insurance Co., 388 Pa. 499, 131 A.2d 600 (1957), the court again considered a claim by a life insurance beneficiary that he was entitled to an additional payment because the insured was killed in a war: the Korean conflict. The court stated that it was bound by its previous rulings in Beley and Harding supra, in the

Beley v. Pennsylvania Mutual Life Insurance Co.,373 Pa. 231, 95A.2d 202(1953), And Harding v. Penna. Mutual Life Insurance Co; 373 Pa.270,95A.2d 221L1953), the Pennsylvania Supreme Court considered the question of whether the beneficiary of a life insurance policy could collect double indemnity under a provision of the contract, if the insured was killed in the armed forces during a war. where the insured was killed in the Korean conflict, in both cases, the court held that the action in Korea was not a war, in the constitutional or legal sense of the word. The court implied that only a declared war could, in fact, be considered a war under the terms of the insurance contract. The rationale for the court's decision was that if the definition of "war" were expanded to include armed conflicts, then the courts would have no criteria to determine what was a "war" and what was merely a shooting sort of a war. The court stated that:

" The existence or non-existence of a state of war is a political, not a judicial question, and it is only if and when a formal declaration of war, has been made by the political department of the government that judicial cognizance may be taken,, thereof, "Beley v. PennsylvaniaMutial Life Insurance Co.,373 Pa. 231, 237, 95A.2d 202. 205(1953).

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insurance contract. However, the majority took pains to limit its decision to the particular facts of the case. Further, the court, in adopting the lower court's opinion, admitted that:

"'It becomes very clear then that hostilities between nations can become war whether solemnly declared or not. War of the perfect kind, solemnly declared, is called declared war. War of the imperfect kind that has not been baptized with the name by Congress is known as undeclared war.'" Thomas v. Metropolitan Life Insurance Co., 388 Pa. 499, 507, 131 A. 2d 600, 604 (1957).

The court in Thomas interpreted Beley and Harding as defining two types of war, declared and undeclared. However, when interpreting the language of an insurance contract, for the sake of clarity and uniformity, the court held that the definition should be limited to that of a declared war.

In Morgan Estate, 2 D. & C. 2d 480 (Luz., 1954), the question arose as to the construction of section 1(b) of the Wills Act of April 24, 1947 (now Act of June 30, 1972, P.L. 508, as amended, 20 Pa.C.S. §2501), which allows a minor in the armed services, in time of war, to dispose of his property by will. The court, after acknowledging the Beley and Harding cases, announced that it would not be bound by their limited definition of "war." Instead, the court chose to define "war" in its popular sense, that is to include both declared and undeclared conflicts. The court (in an opinion by Orphans' Court Judge Benjamin R. Jones, now Chief Justice of the Pennsylvania Supreme Court) distinguished the previous cases by noting that here it was dealing with an enactment of the legislature and not with a private insurance contract.

Finally, other States and the Federal courts have

considered the definition of "war." In Morrison v. United States, 316 F. Supp. 78 (M.D. Ga., 1970), the question arose as to whether the Vietnam conflict was a war within the definition of the Federal Tort Claims Act. The act proscribes recovery for "[a]ny claim arising out of the combatant activity of the military or naval forces or the Coast Guard during time of war." 28 U.S.C. §2680(j), June 25, 1948, 62 Stat. 984, as amended. The court unanimously held:

"While it may be true that a de jure state of war cannot exist without a formal declaration of war, a war is no less a war because it is undeclared." 316 F. Supp. 78, 79 (M.D. Ga., 1970)

Several courts of other States have held likewise: Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 63 N.W. 2d 885 (1954); Western Reserve Life Insurance Co. v. Meadows, 152 Texas 559, 261 S.W. 2d 554 (1953); Stankus v. New York Life Insurance Co., 312 Mass. 366, 44 N.E. 2d 687 (1942); Stanbery v. Aetna Life Insurance Co., 26 N.J. Super. 498, 98 A. 2d 134 (1953).

The preceding cases, while not controlling, are helpful in our analysis. They acknowledge that war may be interpreted either narrowly or broadly, depending upon the construction which the framer intended. Surveying all of the cases,[2] Morgan Es-

2. Recently Commonwealth Court in Shank v. Everett Area School District No. 639 C.D. 1975 (Jan. 23, 1976), ruled that a man who volunteered for military service during the Vietnam conflict could not avail himself of section 1176 of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §11-1176, which permits a public school employe a leave of absence if he volunteers for duty "in time of war or during a state of national emergency." The court held that during the Vietnam conflict there was no declaration of

tate is clearly the most applicable to the question at hand as it is a Pennsylvania case construing a legislative enactment.

The Statutory Construction Act of November 25, 1970, P.L. 707, 1 Pa.C.S. §1924, permits the title and preamble of a statute to be considered when interpreting a statute. The original act, when passed in 1945, was titled:

"Providing for and requiring in certain cases preference in appointments to public position or on public works for honorably discharged persons who served in the military or naval service during any war in which the United States engaged . . ." Act of May 22, 1945, P.L. 837.

The 1955 amendment to the act specifically provided for the preference in hiring and retention of veterans of armed conflicts and not merely those men and women who served in time of declared war. The act has been amended twice since 1955 and on both occasions the title has included the above phrase. The title of the act is evidence that the General Assembly intended that veterans of

---

war or national emergency. The implication in Shank is that a conflict must be declared to be a war. However, Shank should not be viewed as controlling for several reasons. First, the court in Shank dealt with the Public School Code rather than Chapter 71 of the Military Code. This becomes even more significant when one realizes that the reasons for construing "war" to include an undeclared conflict in the Military Code do not exist in the Public School Code, i.e., the language that exists in the title to the Preference in Public Employment Act and the broad definition of the term "soldier" in the Code as are discussed later in the text of this opinion. Also, the court in Shank was never directly presented with, nor did it fully consider, the question of whether the Vietnam conflict fit within the definition of the word "war." Finally, the authorities previously cited in this opinion far outweigh the implications in Shank.

armed conflicts, as well as those of declared wars, should be given seniority preference.

Further evidence of the intent of the legislature can be had by substituting the definition of the term "soldier" for the word "soldier" in the particular provision. Substituting the definition, the statute reads:

"Whenever a reduction in force is necessary in any public position, or on public works of the Commonwealth . . . the number of years of service of any [person who served in the armed forces of the United States . . . during any war or armed conflict in which the United States engaged] shall be determined by adding his total years of service in the civil service or on public works to his total years of service as a member of the armed forces . . . during any war in which the United States engaged." 51 Pa.C.S. §7107.

If the term "war" in this section is construed to include only a declared war, then the section loses its meaning. The statute, when interpreted in the above manner, allows preference for those who served in the armed forces during time of war or armed conflict but only if they served during a declared war. Such an interpretation makes little sense. A far more reasonable construction would allow preference for those who served either during an armed conflict or time of declared war. When seeking the intent of the legislature, there is always a presumption that the General Assembly did not intend a result which is absurd or unreasonable: 1 Pa.C.S. §1922(1).

A further question concerns the duration of a war or armed conflict; that is when, for the purposes of the act, does a conflict begin and end? Decisions that have dealt with the beginning of a war or

armed conflict have concluded that a war or conflict begins with the opening of hostilities: Stinson v. New York Life Insurance Co., 167 F. 2d 233 (D.C. Cir., 1948); New York Life Insurance Co. v. Bennion, 158 F. 2d 260 (10th Cir., 1946); Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A. 2d 202 (1953); Darnall v. Day, 240 Iowa 665, 37 N.W. 2d 277 (1949). Therefore, a war or armed conflict begins when the United States becomes involved in the hostilities.

Several courts also have considered the issue of the end of a war or armed conflict. It is clear that a declared war ends upon the cessation of hostilities rather than the signing of a formal peace treaty and Pennsylvania cases have so held: Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A. 2d 202 (1953); Harding v. Pennsylvania Mutual Life Insurance Co., 171 Pa. Superior Ct. 236, 90 A. 2d 589 (1952), affirmed, 373 Pa. 270, 95 A. 2d 221 (1953). The courts of other jurisdictions are in accord: New York Life Insurance Co. v. Durham, 166 F. 2d 874 (10th Cir., 1948); Stinson v. New York Life Insurance Co., 167 F. 2d 233 (D.C. Cir., 1948); Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 63 N.W. 2d 885 (1954). Further, although the preceding decisions dealt with declared wars, the language employed by the various courts makes it clear that they would apply the same logic to an undeclared conflict.

"[I]t is the common understanding that a war is no longer a war when the shooting is ended, regardless of official pronouncements . . . 'War in the practical and realistic sense in which it is commonly used, refers to the period of hostilities'.": Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 720, 63 N.W. 2d 885, 889 (1954).

Such a decision only makes sense. If an official

pronouncement is not necessary to begin an undeclared war, as is necessary to begin a declared war, there is no reason why an official pronouncement should be relevant to end an undeclared conflict if it is irrelevant to the end of a declared war.

For the purposes of the Military Code, a declared war or armed conflict begins with the opening of hostilities and ends with the cessation of the action. Using the above criteria, it is possible to determine the exact dates, for the purposes of the code, of recent conflicts involving the United States. World War I began with the declaration of war on Germany on April 6, 1917, and ended on November 11, 1918, with the signing of the peace treaty. World War II began with the attack on Pearl Harbor on December 7, 1941, and ended with the signing of the peace treaty with Japan on September 2, 1945. The duration of the Korean conflict was from June 25, 1950, when the North Koreans attacked to July 27, 1953, which was the date of the cease fire at Panmunjom. The Vietnam hostilities began on August 5, 1964, with the Gulf of Tonkin incident and ended with the signing of the Paris Peace Accord on January 28, 1973.

When attempting to define "war," one must keep in mind a historical perspective. The original act was passed in 1945. At that time the term "war" had quite a different connotation than it does today. In 1945, World War II had just ended and World War I was still recent history. All large scale conflicts were formally declared wars. Today the large conflicts of recent memory, Korea and Vietnam, were not declared wars; but were waged on a scale and intensity approaching that of previously declared wars.

Finally, when examining the history of the act, it can be seen that the act was broadened several

times by amendments. The major amendments were in 1955, 1965 and 1972. The 1955 amendment expanded the title of the act to include armed conflicts and also expanded the definition of "soldier" to include those who served during armed conflicts as well as declared wars. The 1965 and 1972 amendments again broadened the definition of "soldier" to specifically include Vietnam veterans. In short, the General Assembly has acted to expand the coverage of the act to include each of the major undeclared armed conflicts in the last 25 years in which the United States was involved. In order to effect the intent of the General Assembly, and to be consistent with the evolution of the act, a broad interpretation should be given to the term "war" as it is used in section 7107 of the Military Code.

In conclusion, it is our opinion, and you are hereby advised, that section 7101 of the Military Code, 51 Pa.C.S. §7107, should be interpreted as granting to those veterans who meet the act's definition of "soldier" additional seniority, to the extent of the time they served in the armed forces of the United States during a declared war or armed conflict in which the United States was involved.

In re Summit House

Taxation—Real property taxes—Condominium—Uniformity of assessment in comparison with similar tenanted properties.

The requirement of the Pennsylvania Constitution, article VIII, section 1, for uniformity of taxation upon the same class of subjects requires that the assessment of the total number of units in a condominium be no greater than the assessment of a comparable building occupied by tenants, despite the argument that the market value of all of the units in the condominium is greater.

S-4

DEPARTMENT OF TRANSPORTATION
October 20, 1978

REFER TO

U.S. Court of Appeals attention is requested Herell

NOTE: VIOLATION OF JUDICIAL OPINION #6-3 DATED: 2/23/76 - ATTY. GEN'L KANE OF U.S. SUPREME COURT. ACTION TOOK AWAY CIVIL / PUBLIC SERVICE TIME THAT SHOULD HAVE BEEN ADDED TO "SOLDIER'S" MILITARY TIME SEE - "MOTION FOR AMENDED FINDINGS - OF FACTS."

ATT.. 1723 334M 166122803
N. MAZUR
306 W. CENTER ST.,
SHENANDOAH, PA. 17976

PA
17901

Based on several grievances submitted by AFSCME, the Department of Transportation recently received an Arbitration decision concerning the implementation of furloughs and the calculation of seniority for employes affected by furloughs on June 30, 1978 and September 1, 1978. The arbitrator ruled that seniority credit for employes in the Transportation Construction Inspector 3 class was improperly calculated. This also affects Real Estate Specialist Supervisors and Real Estate Appraisers 3. This resulted from Executive Board classification changes which in turn created bargaining unit changes for employes in these classifications.

The arbitrator ruled that the bargaining unit seniority these employes earned prior to the classification changes should not have been credited toward the bargaining unit seniority earned after the classification and bargaining unit changes were made. As a result, the Department was directed to recompute seniority for these affected individuals and consequently to determine who should have been furloughed or bumped based on these new seniority calculations.

As a result, some employes were improperly furloughed or bumped. Correspondingly, some employes were improperly retained or bumped. You are one of the employes affected by this recalculation and were improperly retained. Therefore, in order to comply with the arbitrator's decision, we have been directed to reinstate another employe in your classification who was improperly furloughed. You regrettably, must be furloughed instead. This furlough will be effective at the close of business November 1, 1978. Your District Office will meet with you to answer any questions you may have as well as to discuss and provide counseling relative to your furlough status.

I sincerely regret that this action is necessary, but we, unfortunately, have no choice based on the arbitration decision. You have 20 days from the receipt of this letter to file an appeal with the

Referenced Pages 46,47,48,
and 49 of Appellant's
Brief dated 2/15/80.

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APPENDIX "B" P17 5

State Civil Service Commission regarding this action, if you choose to do so. An extract from the Civil Service Act explaining your appeal rights is attached.

Very truly yours,

John Harhigh, Director
Bureau of Personnel

Attachment

Referenced pages:46,47,48
and 49 of Appellant's
Brief, dated 2/15/80

APPENDIX "B" P27 5

Date Prepared 10-20-78

District Central Office

Class Title Real Estate Spec. III-1723

Parenthetical

Bargaining Unit B-1

"B" List (Bumping List, All Current Incumbents of Class Plus Those Eligible to Bump)

Name	Bargaining Unit Service Date	Action Taken/ Other Classes
Prinkey, M. P.	11-10-63	* RE-INSTATEMENT BY FEDERAL
Walter, J. H.	9-10-66	COURTS REQUESTED WOULD BE
Reefer, J. H.	6-5-69	AS FOLLOWS #
Shenk, F. T.	5-20-71	N. MAZUR - R/W ADM. - 9-12-68
Romig, M. V.	9-15-71	J. H. REEFER 6-5-69
Gross, R. C.	1-22-72	F. T. SHENK 5-20-71
Lehr, D. W.	8-11-72	V. M ROMIG 9-15-71
Seitz, D.	9-6-72	R. C. GROSS 1-22-72
[illegible]ur, N.	7-27-75	D. W. LEHR 8-11-72
[illegible]L. R. D.	3-3-77	O. R. PAUL 3-3-77

U.S. Court of Appeals attention is called HERE!!!

* * THE REVISED STANDING, LISTED ABOVE, WOULD BE APPROXIMATELY THE SENIORITY STANDINGS, IF U.S. SUPREME COURT MAKES THE STATE OF Pa. HONOR THE JUDICIAL OPINION # 76-3, 2/23/76, 73 D&C, P74 to P752.

Referenced Pages: 46,47,48 and 49, of Appellant's brief dated 2/15/80.

APPENDIX "B"

P 36 *

10/20/78

ARBITRATION AWARD FACT SHEET

I. Seniority Dates

A. Those employes improperly furloughed who are returning to work will have seniority credited as if they never left.

B. Those eligible to return but who do not accept reemployment will have seniority credited retroactive from November 3, 1978 to their furlough date. If did not return October 23, 1978, show as LWOP but still give seniority credit.

C. Those eligible to return but do not because they would be furloughed on November 8, 1978 will be shown as LWOP from October 23, 1978 to November 8, 1978, furloughed at close of business November 8, 1978 and will have seniority credit to November 8, 1978.

D. Employes improperly bumped are restored to their proper levels effective October 23, 1978. However, their seniority is to be credited toward what should have been their proper class and/or bargaining unit retroactive to their original "improper" bumping date (July 1, 1978 or September 2, 1978). This applies to both downward and upward restoration.

II. Recall Provisions

A. Those employes furloughed on November 1, 1978 will have three years of recall rights starting from the date they should have been furloughed, either July 1, 1978 or September 2, 1978. They will be merged with persons on recall lists from those dates. For recall purposes only, seniority credit earned after the furlough date will be subtracted so that their relative seniority with others furloughed on either July 1, 1978 or September 2, 1978 remains consistent.

B. Employes improperly furloughed who choose not to return to work lose recall rights because they refused recall.

C. Employes improperly furloughed, who could come back, but do not because they will be furloughed on November 8, 1978 are treated as if furloughed on November 8, 1978.

D. Recall rights for employes who are bumped to lower levels on October 23, 1978 begin on the date they should have been bumped, either July 1, 1978 or September 2, 1978. For example, a Trans. Const. Insp. 3 who was bumped to Trans. Const. Insp. 2 on October 23, 1978, but who should have bumped on September 2, 1978, will have recall rights to Trans. Const. Insp. 3 which begin retroactive to September 2, 1978 and continue for three years.

Referenced Pages: 46,47, 48, and 49, of Appellant's brief dated 2/15/80.

APPENDIX "B" P4 & 5

Case n 80-1474
United States Court of Appeals- Third Circuit

HISTORICAL CLASS/SENIORITY CHANGES, GENERATED FROM APPELLEES ACTIONS ON THE APPELLANT STATUS

Ref. no.	Class Holding	Time/Date In Effect	Seniority Class Standing	By What Directive or Achievement	Seniority Time Application Civil Service (Plus) Military (As of 8/4/80)	
1	R.E.SIV	4-10-77	#1 of 4	Civil Service	8YRS.4mos/3/days	3Yrs/7mos/10Days
2.	R/W ADM	8-29-77	#4 of 4	PennDot Ltr.8/29/77	none	3Yrs/7mos/10Days
3.	R.E.S.III	2-6-78	#6 of 11	PennDot Ltr.2/16/78	4Yrs/7mos/26days	2Yrs/3mos/16Days
4.	R.E.S.III	10-20-78	#9 of 11	Gov. Ofc.Arb. Case 10/20/78	none	2yrs.3mos/16Days
5..	R/W Adm or R.E.S.IV	8-4-80 U.S.Ct.of Appeals	#1 of 3	U.S. Court of Appeals hearing -8/4/80	8Yrs/4mos/3Days	3Yrs/7mos/10Days.

FLOW PROCESS CHANGE CHART FROM CLASS TO CLASS PER APPELLEES DIRECTIVES

Original Appellant'sCLASS achieved through Civil Service was R.E.S.IV.

Step(s)	Class	By What Directive and/or Achievement
1	R.E.S. IV	Civil Service Tests
2	R/W/ Adm.I	
3	to R.E.SIII and/or R.E.S.III(Suprv.) (Pay grade Change) : (No pay grade change)	PennDot Ltr. 3/29/77
4	R.E.S.III Loss of Civil Service Time : R.E.S.III(Suprv.) (no changes)	PennDot Ltr. 5/3/77 and AFSCME Ltr. 5/5/77. and. Gov. Ofc.Arb. Case 10/20/78

APPENDIX "B"

Legal by: Orichello, Grogan, Graf & Slavin
Appellant's Counsel